

Reserved On : 05/03/2026
Pronounced On : 20/03/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 22226 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 18515 of 2019
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021
In R/SPECIAL CIVIL APPLICATION NO. 18515 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J. SHELAT

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Approved for Reporting	Yes	No
		✓

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THE TRUSTEE, AHMEDABAD JESUITS SCHOOLS SOCIETY & ANR.

Versus

BIJU JOSE VADAKEN & ORS.

Appearance:

MR SUDHIR NANAVATI, SENIOR COUNSEL for NANAVATI &

NANAVATI(1933) for the Petitioner(s) No. 1

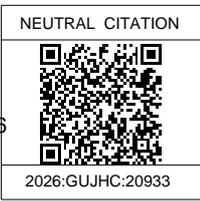
MR SANDIP H MUNJYASARA(10781) for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2,3,4

MS FORUM BIMAL SUKHADWALA, AGP for the Respondent – State

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CORAM: HONOURABLE MR. JUSTICE MAULIK J. SHELAT



CAV JUDGMENT

1. The petitioners of both these petitions, seek to challenge the very same order dated 10.05.2019 passed by the Gujarat Educational Institutions Services Tribunal at Ahmedabad (hereinafter referred to as “*Tribunal*”) in Application No. 146 of 2016 (Old Application No. 5 of 2014). In view of the aforesaid, both these petitions are heard together and decided by way of this common judgment.
2. The petition of Special Civil Application No. 22226 of 2019 is filed on behalf of the Ahmedabad Jesuit School Society (hereinafter referred to as “*School*”) and Special Civil Application No. 18515 of 2019 is filed by an Assistant Teacher (hereinafter referred to as “*Teacher*”), whose service came to be terminated by the School.
3. Heard Mr. Sudhir Nanavati, learned Senior Advocate appearing on behalf of Nanavati & Nanavati for the School, Mr. Sandip H. Munjyasara, learned Advocate for the Teacher and Ms. Forum Bimal Sukhadwala, learned Assistant Government Pleader for the respondent Nos.2 to 4.



4. With consent of learned Advocates for the respective parties, the matter is taken up for hearing.

5. **THE SHORT FACTS OF THE CASE APPEAR TO BE THAT:**

5.1. The Teacher was appointed as the 'Shikshan Sahayak' in the Higher Secondary Section of the school vide the appointment letter dated 13.02.2006. The appointment letter was signed by Father M.G. Raj jointly with the Principal of the School.

5.2. The Teacher, while in service, was served with a show-cause notice dated 01.04.2013 under Section 36(1) of the Gujarat Secondary Education Act, 1972 calling upon him to show cause why he should not be dismissed as a 'Teacher' on the following charges:

"1 That you had sent an objectionable anonymous shall mail in the name of some exteacher against the school, principal and Vice Principal in September 2011. That the Institution filed a criminal complaint with the concerned police station, wherein after investigation you were found guilty by the police authorities. That the Institution did not pursue the complaint against you on a sympathetic consideration on your tendering an apology on 15.10.2011, to the Institution.



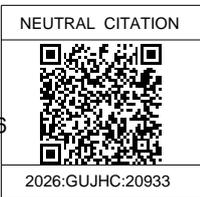
2 That a student of Class XII A student gave a written complaint on 17.08.2012, stating that you were instigating students against the school. That it was also reported in writing by a student on 27.08.2012, that when the existence of such letter / complaint came to your knowledge, you forced the student to change his version and state that the student was not the author of such a letter / complaint.

3 That your objectionable actions have been reported by the students to their parents and hence, one parent has given a written complaint against you on 01.10.2012, complaining that you were causing mental harassment to their ward.

4 That the staff members of the Institution had made written complaints about you on 15.07.2011, 13.09.2012, 04.12.2012, 24.12.2012 and 03.01.2013. That you had also misbehaved with our supervisor Mrs. Laxi Iyer in the open forum on 22.12.2012.

5 That few days later i.e. 03.01.2013, it was reported that you fought with Mr. Ravi Pillai in the staff room, threatened him and insulted him.

6 That in yet another incident, it was observed that you were forcing students to give a feed back during the classroom study time, which was not required and was sheer waster of time. That such an action on your part indirectly involves children into unwarranted person score setting tactics and is extremely unbecoming of a teacher.



7 That the Institution has noticed that despite numerous opportunities given to you to improve your conduct towards the school, its staff and its students, you have continued to misbehave and cause unnecessary hardship in the smooth functioning of Institution, which in turn is likely to malign the reputation of the Institution.

8 That were earlier also issued a showcause notice dated 21.01.2013, in respect of the incident of your asking for feedback from the students during study hours. That you have given a response to the said notice on 23.01.2013, which seems to be a lame excuse and has not been found satisfactory by the Institution.”

5.3. The School found the reply to the show-cause notice not convincing and accordingly decided to initiate a regular departmental inquiry. The Inquiry Officer, on the conclusion of the inquiry, held the charges to be established. Some of the findings recorded by the Inquiry Officer are as under:

“13. On a proper appreciation of depositions of all the witnesses and the documents produced by the management and more particularly, considering the depositions of the Principal of the School, Ms. Laxmi Iyer, Ms. Preetha Pillai, Ms. Nandini Majmudar, Mr. Ravi Pillai and Mr. Ashwin Mehta, it is proved beyond any reasonable doubt that the delinquent employee is guilty of the charges levelled against him.



14. *That school management has also examined other independent witnesses like the parents of the school. One parent Mr. Shailesh Maheshwari has given a statement on 22.10.2013 wherein, he has alleged that the delinquent employee is favouring particular group of the students in the practical examination. In the same line other witness like Dr. Raj shah has given the similar deposition. When the parents of the students have given statements that the delinquent employee, I have no reason to disbelieve their statement and more particularly when they are not cross examined by the delinquent employee.*

15. *The statements of all the witnesses were given to the delinquent employee. The delinquent employee has been asked to cross examine all the witnesses which he has refused to do so. When there is nothing contrary to the statement given by the witnesses and when the delinquent employee has also not given his defence statement, I am left with no other alternative but to accept the deposition given by all the witnesses. There is enough documentary evidences which prove that the delinquent employee is guilty of the charges levelled against him. I am not resisting myself from referring to the email produced by the witnesses wherein the delinquent employee has made serious charges against the Principal of the school and others. Not only that but the delinquent employee has also admitted that the email dated 15.9.2011 is sent by him and for that he has given a written apology on 15.10.2011. The copy of email dated*



15.9.2011 and a written apology dated 15.10.2011 if read together, it is proved beyond any reasonable doubt that the behavior of the delinquent employee is not befitting of a teacher of higher secondary school.

16. On the basis of the statements of the parents and also the statements of the students of the school, I hold that the delinquent employee is guilty of the charges levelled against him and that the delinquent employee demonstrates a threat to the students. I state that the parents and the students have no reason to give a false statement against the delinquent employee. Even the delinquent employee has failed to examine these witnesses. These are independent witnesses and when there is no contradictions in their statements, I have to accept the words of the parents and reach the conclusion that the delinquent employee is guilty of the charges. Similarly on the basis of all the witnesses that include even the statement of the parents, I hold that the delinquent employee has committed a breach of condition No.5(8) of Schedule – 2 of Regulation 27(A) of Gujarat Secondary Education Regulation, 1974.

17. On the bare perusal of the statement by lady supervisor, Ms. Laxmi Iyer, Mr. Ravi Pillai and the statement of the Principal of the school, I have reached the conclusion that the delinquent employee is guilty of the charges levelled against him and that the delinquent employee has misbehaved with the lady supervisor Ms. Laxmi Yer and Mr. Ravi Pillai.



18. From the above, I hold that the management has successfully proved that the delinquent employee is guilty of the charges levelled against him and hence, I hold the delinquent employee guilty of all the charges levelled against him."

- 5.4.** The Teacher was served with a second show-cause notice dated 21.11.2013 along with a copy of the inquiry report calling upon him to show cause why he should not be dismissed from service.
- 5.5.** It appears that the Society, vide its resolution dated 18.11.2013, authorized Father M.G. Raj to issue the show-cause notice. Later on, vide the resolution dated 09.12.2013 passed by the Society, Father M.G. Raj was authorised to pass an order dismissing the Teacher from service. The Teacher was accordingly dismissed from service.
- 5.6.** The Teacher challenged the order of dismissal before the Gujarat Educational Institutions Services Tribunal by filing Appeal No.339 of 2014. The Tribunal thought it fit to partly allow the appeal by directing the school to issue a fresh show-cause notice and *initiate a de novo* departmental inquiry.
- 5.7.** After hearing the parties, the Tribunal appears to have allowed the said appeal vide its order dated 09.12.2015 and remanded



the matter to the school authority. The aforesaid order came to be challenged before this Court by way of Special Civil Application No. 1067 of 2016, which came to be partly allowed by the Coordinate Bench of this Court vide its judgment dated 19.09.2016, whereby, it has quashed the aforesaid order of the Tribunal and also remanded the matter back to the Tribunal, with a specific direction to the Tribunal that it shall, without going into any technicalities, consider whether the findings recorded by the disciplinary authority are based on some legal evidence, or the case is one of no evidence, or the findings are totally perverse or legally untenable. The Teacher appears to have carried the said judgment before the Division Bench of this Court by filing an appeal being LPA No. 1237 of 2016. The Division Bench, vide its order dated 21.08.2017, though it confirmed the aforesaid order of remand passed by the Coordinate Bench, it has observed that such remand shall be an open remand, whereby, all contentions/defences which may be available to the respective parties are kept open to be considered by the Tribunal in accordance with law.

5.8. Upon remand of the matter and after giving an opportunity of hearing to both sides, the Tribunal, vide its impugned order



dated 10.05.2019, partly allowed the said appeal, whereby, it has set aside the order of dismissal and remanded the matter to the school authority to issue a fresh second show-cause notice before passing any order of punishment. Although, the Tribunal has opined that there is no violation of the principles of natural justice during the course of inquiry conducted by the School.

5.9. Thus, feeling aggrieved and dissatisfied with the impugned order passed by the Tribunal, the School as well as the Teacher have filed their respective petitions.

6. SUBMISSIONS OF TEACHER:

6.1. In support and oppose of the petitions filed by the Teacher and the School, respectively.

6.2. Mr. Munjyasara, learned Advocate for the Teacher, has made the following submissions:

- i.** The first show-cause notice dated 01.04.2013, which was issued and served upon the petitioner prior to the initiation of any inquiry, is without jurisdiction, as it was not issued by the Manager as required under the Gujarat Secondary and Higher



Secondary Education Act, 1972 (hereinafter referred to as “*the Act, 1972*”).

- ii. The disciplinary authority of the school never served any charge-sheet upon the petitioner; rather, the charges were framed by the inquiry officer in the first meeting of the inquiry held on 04.06.2013. This itself violates the principles of natural justice.
- iii. The inquiry was not conducted in a fair and transparent manner by the inquiry officer and Teacher was not provided with adequate documentary evidence for the effective cross-examination of witnesses.
- iv. It is not in dispute that along with the first show-cause notice dated 01.04.2013, no documents were provided to Teacher. Even the statements/depositions of witnesses were, in fact, not supplied till the 11th meeting held on 22.10.2013, but Teacher was forced to cross-examine the witnesses.
- v. Likewise, in the 12th meeting also, the request of the petitioner to grant some time to prepare himself for cross-examination was not acceded to by the inquiry officer; rather, he closed the inquiry on the very day and submitted his report. This itself



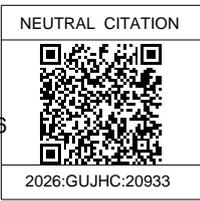
shows the predetermination of the inquiry officer to hold Teacher guilty.

- vi. The reason of requesting for time was due to receipt of the statements/depositions of witnesses on 28.10.2013 and other relevant documents were not provided to Teacher.
- vii. The second show-cause notice came to be issued by the school authority to Teacher on 18.11.2013 and granted 15 days' time to submit the reply, but due to the delay in submission of reply beyond 15 days by the Teacher, it was not taken into account when the order of dismissal was passed by an unauthorized person on behalf of the school on 09.12.2013.
- viii. The impugned order of dismissal before the Tribunal was signed by Fr. M.G. Raj, S.J. (hereinafter referred to as "**Raj**"), who was neither the Manager, nor a Trustee, nor the Principal of the School and thus, the impugned order of dismissal was passed without jurisdiction. As per Section 36(1) of the Act, 1972, the service of the Teacher can be terminated only by the Manager. The definition of the term 'Manager' is also given in Section 2(j) of the Act, 1972, which means a person or a body of persons in charge of the control or management of the



school. There was nothing placed before the Tribunal to show that the said Mr. Raj was the Manager as defined under the Act, 1972.

- ix.** The Tribunal has erroneously observed that the provision of Section 36(1)(a) is not applicable to the school. Even it is not the case of the school that the said provision is not applicable to the school. The impugned order passed by the Tribunal is not only erroneous but perverse and accordingly, it may be quashed and set aside.
- x.** The Tribunal has not properly appreciated the evidence made available on record; rather, it erroneously observed that the inquiry conducted by the school was not in violation of the principles of natural justice.
- xi.** The petition filed by the School may be dismissed on the ground of suppression of material facts, as it has not mentioned that the Teacher has already challenged the impugned order passed by the Tribunal by way of Special Civil Application No. 18515 of 2019, though the school authority is aware about the same as they appeared on caveat. The order secured by the school in its petition is *ex parte* and that too by suppression of



facts, therefore, this Court may not entertain such petition and the same may be dismissed with costs.

xii. To buttress his arguments, Mr. Munjyasara, learned Advocate, would rely upon the following decisions:

(1). *Rattan Lal Sharma V/s. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School and others, reported in (1993) 4 SCC 10;*

(2). *Dalip Singh V/s. State of Uttar Pradesh and others, reported in (2010) 2 SCC 114;*

(3). *K. D. Sharma V/s. Steel Authority of India Limited and others, reported in (2008) 12 SCC 481;*

(4). *Deputy General Manager (Appellate Authority) and others V/s. Ajai Kumar Srivastava, reported in (2021) 2 SCC 612;*

(5). *Chowdamma (D) by LR and another V/s. Venkatappa (D) by LRs and another, reported in 2025 LiveLaw (SC) 838.*

xiii. Making the above submissions, Mr. Munjyasara, learned Advocate, would request this Court to allow the writ petition being SCA No.18515 of 2019 and dismiss the SCA No.22226 of 2019.



7. SUBMISSIONS OF SCHOOL:

7.1. In support and oppose of the petitions filed by the School and the Teacher, respectively.

7.2. Mr. Sudhir M. Nanavati, learned Senior Counsel for the School, has made the following submissions:

- i.** The impugned order passed by the Tribunal is not only erroneous but perverse when it remanded the matter back to the school authority for the issuance of fresh second show-cause notice.
- ii.** The Tribunal has erroneously observed that Mr. Raj was not an authorized person to issue the second show-cause notice and/or to pass the order of dismissal, as he was not holding any post in the school. The Tribunal has overlooked the resolution passed by the governing body of the school on 09.10.2013, whereby, it has resolved that the Teacher is to be dismissed from service and it has authorized Mr. Raj to pass the order of dismissal against Teacher.
- iii.** Once the governing body of the school passed the aforesaid resolution and authorized Mr. Raj to pass the order of

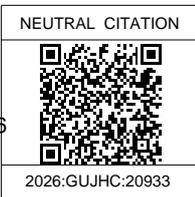


dismissal against Teacher, it cannot be inferred that the impugned order of dismissal was passed by an unauthorized person of the school and to that extent, the impugned order passed by the Tribunal requires to be interfered with by this Court.

- iv.** As per Rule 11 of the Rules and Regulations of the School, the Managing Board has entire control of the management of the school, whereby, they have the power to appoint as well as to award punishment upon employees of the school. They also have the power to delegate any of their acts to the heads of the institution. Even as per Rule 13 of the said Rules, it would save any action taken in good faith and it would not invalidate it, merely on account of technical irregularities of procedure. Accordingly, the governing body was very well within its power to authorize Mr. Raj to pass the order of dismissal.
- v.** The appointment order of the Teacher dated 13.02.2006 was also signed by Mr. Raj along with the Principal of the School, thereby, it cannot be argued that Mr. Raj was not an authorized person and not the Manager as per the Act, 1972.



- vi.** In fact, as per the resolution dated 15.06.2005 passed by the Governing Body of the School, Mr. Raj was authorized on behalf of the management to act and sign as a Trustee in matters relating to appointment, dismissal and other important disciplinary actions related to staff members. Nonetheless, it has not been placed before the Tribunal, but considering the totality of the facts and circumstances, the reasons assigned by the Tribunal while remanding the matter back to the school are unsustainable in law.
- vii.** The Tribunal has categorically recorded and observed in Paras 16 and 17 of the impugned order that there was no violation of the principles of natural justice during the course of the inquiry; rather, an ample opportunity was given to the Teacher, despite that he had not availed himself of such opportunity.
- viii.** The school is a minority institution only required to observe the principles of natural justice before dismissing Teacher. There is a complete misreading on the part of Teacher in regard to the fact that his dismissal was not by the Manager as per Section 36(1)(a) of the Act, 1972. There are no any prescribed rules of procedure to be undertaken during the course of inquiry



stipulated under any statutory Rules and/or the Act, 1972, as the case may be, applied to minority institution like the school.

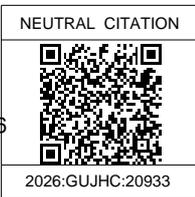
- ix.** The grievance raised by the Teacher that the first show-cause notice and the charge-sheet framed by the inquiry officer are nothing but an afterthought, as before the Tribunal, no such arguments were ever raised and pressed into service by the Teacher after the remand of the matter by this Court. Rather, as observed in Para 17 of the impugned order by the Tribunal, the Teacher has not questioned the legality and validity of the inquiry and as such, no argument was raised before the Tribunal in this regard, which is self-sufficient to show that such an argument is not tenable in law.
- x.** The Teacher was given all opportunities to cross-examine the witnesses; rather, he chose to leave the 11th meeting and for no reason, sought time in the 12th meeting to cross-examine the witnesses. When such was the attitude of the Teacher during the course of the inquiry, the inquiry officer thought it fit not to delay the inquiry anymore and in that view of the matter, did not accede to the request of Teacher, which cannot be viewed as a violation of the principles of natural justice.



- xi.** The Teacher was given an opportunity to defend his case before the inquiry officer and the inquiry was conducted in fair and transparent manner. The first show-cause notice wherein the charges were framed against Teacher was duly replied by Teacher. Even during the first hearing of the meeting, no objection raised by Teacher when the inquiry officer formulated the issues which were titled as charges.
- xii.** This Court may not entertain the petition filed by Teacher and accept the petition of the school, as the impugned order of the Tribunal remanding the matter back to the school is unsustainable in law.
- xiii.** Making the above submissions, Mr. Nanavati, learned Senior Counsel, would request this Court to allow writ petition being SCA No.22226 of 2019 and dismiss SCA No.18515 of 2019.
- 8.** No other and further submissions are being made.

POINTS FOR DETERMINATION:

- 9.** Having heard learned advocates appearing for the respective parties and upon perusal of the impugned order of the Tribunal



as well as after going through the record and proceedings, the following points fall for my consideration:

[1]. Whether, in the facts and circumstances of the present case, the principles of natural justice were observed by the school during the inquiry in all respects?

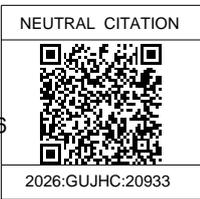
[2]. Whether the second show-cause notice dated 21.11.2013 and the impugned order of dismissal dated 09.12.2013 signed by Fr. M.G. Raj, S.J. are in consonance with the provisions of Section 36(1)(a) of the Act, 1972?

ANALYSIS:

POINT NO.1:

- 10.** Before advertng to the points germane to the matter, I would like to first refer to the relevant provisions of the Act, 1972, as under:

“Section 2(j): “manager” in relation to any school means a person or a body of persons in charge of the control or management of the school.”



“Section 36(1): No person who is appointed as a head master, a teacher or a member of non-teaching staff of a registered private secondary school [or registered private higher secondary school] shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated by the manager until-

(a) he has been given by the manager a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, and

(b) the action proposed to be taken in regard to him, has been approved in writing by an officer authorised in this behalf by the Board:

Provided that nothing in this sub-section shall apply to any person who is appointed for a temporary period only.”

“Section 40A: Notwithstanding anything contained in this Act, sub-section (1) of section 34, and clause (b) of sub-section (1) and sub-sections (2), (3), (4) and (5) of section 36 shall not apply to any educational institutions established and administered by a minority, whether based on religion or language.”

11. The Teacher was appointed by the school on 13.02.2006 and his appointment letter would suggest that it was signed by the Principal of the School as well as Mr. Raj as a Trustee of the School. The first show-cause notice under Section 36(1) of the



Act, 1972, came to be issued on 01.04.2013 upon Teacher by the School. The bare reading of the said notice would suggest that the charges were framed against Teacher and with the aforesaid notice, it was served. The said notice is signed by the Principal of the School.

12. The grievance raised by the Teacher before this Court is that the said show-cause notice was not served by the Manager and thereby, the entire inquiry proceeding initiated by the school is vitiated. The bare reading of the impugned order of the Tribunal would suggest that such argument was never pressed into service at least after the remand of the matter by this Court. The Tribunal has categorically recorded in the last portion of Para 17 of impugned order that no representation has been made before the Tribunal regarding the legality and propriety of inquiry conducted against the applicant. Apart from the said, the Tribunal, upon remand, framed only four issues for its consideration, wherein the issue as regards incompetency of the principal to issue the first show-cause notice/charges is not framed. Thus, this Court has reason to believe that such point was never raised and pressed into service before the Tribunal.



13. Be that as it may, the plain reading of definition of ‘Manager’ given under Section 2(j) of the Act, 1972, would indicate that the person in charge of the control or management of the school is considered as the Manager. The post of the principal is nothing less than to control the day-to-day management of the school and being an administrative head over the Teacher and other staff, according to my view, the principal can be treated as the Manager as per the Act, 1972.
14. So far as the framing of charges by the inquiry officer is concerned, there is no substance in the argument of Mr. Munjyasara, learned advocate for the Teacher that due to framing of charges by the inquiry officer, he was biased towards Teacher. As stated hereinabove, the charges were already framed by the school when issued the said first show-cause notice to teacher. Rather, teacher has duly replied to the said notice/charges point-wise vide his reply dated 10.04.2013. No grievance was ever raised by Teacher in his reply, either of questioning the authority of the principal to issue said notice under Section 36(1) of the Act, 1972, or of alleging that no charges were served upon him. As far as the bare look of the first meeting dated 04.06.2013, wherein, the charges were



alleged to have been framed by the inquiry officer, is concerned, it appears that there were four issues framed by the inquiry officer but he titled it as charges. Again, the Teacher was very much present in the first meeting and without any objection, he has signed the minutes of the said meeting.

15. In light of the aforesaid facts and circumstances, it does not lie in the mouth of the Teacher to complain at this stage that the issuance of the first show-cause notice, non-serving of the charge-sheet, and/or framing of charges by the inquiry officer vitiated the entire inquiry proceedings.
16. So far as the allegation of non-observance of the principles of natural justice by the inquiry officer during the course of inquiry is concerned, it is also unsustainable, inasmuch as it has been revealed from the record that it was duly observed. The conduct of Teacher in the 11th and 12th meetings duly recorded by the Tribunal while arriving at the conclusion that an adequate opportunity of hearing was granted to Teacher. The relevant observations of the Tribunal made in Paras 16 and 17 in this regard need to be reproduced, which read thus:

“16. However, when the applicant is dismissed from service, it must be examined, on the basis of the record



of the case, whether he was provided a reasonable and sufficient opportunity of defense in accordance with the principles of natural justice or not. It has been submitted on behalf of the applicant that, despite his demand for copies of the documents during the Inquiry proceedings, the Inquiry Officer did not pass any order and failed to provide the documents. Therefore, as the applicant was not given a proper opportunity to put forth his adequate defense, the principle of natural justice was not followed in the Inquiry. In the minutes of the 12th meeting before the Inquiry Committee, an objection was recorded on behalf of the applicant, wherein there is no mention regarding the non-receipt of documents, which itself shows that a false representation has been made by the applicant regarding the non-receipt of documents during the Inquiry. Furthermore, in paragraph 8 of the cross-examination during the applicant's testimony recorded in the present case, a clear question was asked: "Whether you had received all the documents during the Inquiry?" At that time, the applicant replied in the Cross Examination that he had received the documents but they were insufficient. However, he did not clarify which documents were insufficient or in what manner. In such circumstances, it appears reasonable to admit the Respondent's submission that the Applicant made false allegations and complained about the documents during the Inquiry. It does not appear in the original application that the applicant raised any specific objection regarding the Inquiry process. In these circumstances, the applicant's argument of not providing him sufficient documents during the Inquiry cannot be accepted at this stage. In the produced record of the Inquiry, there is no

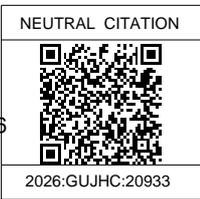


remark showing that the applicant demanded documents during the Inquiry and such documents were not provided to him. On the contrary, the applicant remained present in all the meetings of the Inquiry proceedings and even participated in the Inquiry, which indicates that the Inquiry against the applicant was conducted according to the principles of natural justice. In these circumstances, the argument made on behalf of the applicant, that the documents demanded by him during the Inquiry were not provided and because of that the said Inquiry should be declared illegal and unreasonable due to non-compliance with the requirement of providing an adequate defense, is not admissible. An argument has also been made on behalf of the applicant that the Inquiry Officer abused his power and proceeded ultra vires and drew the Charge-Sheet against the applicant. Looking at the record of the Inquiry, nothing has been shown by the applicant as to which power the Inquiry Officer abused. In those circumstances, it has not been established by the applicant that the power was abused by the Inquiry Officer. In these circumstances, the said argument of the applicant also becomes unacceptable. It has also been argued on behalf of the applicant that on 01/11/2013, the Inquiry Officer noted in the minutes of the Inquiry that the Inquiry Report would be submitted within 7 days. Nevertheless, the Inquiry Report was submitted on the very same day. Due to this, the Inquiry and the Inquiry Report ought to be considered per-determined. This argument of the applicant is also not acceptable because the Inquiry Report was submitted by the Inquiry Officer only after the completion of the Inquiry. Whether that report is submitted on the same day or

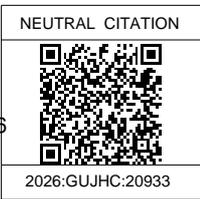


thereafter, I find no substance in the applicant's argument that the Inquiry and the Inquiry Report against the applicant were per-determined, and therefore, the said argument of the applicant is not admissible.

17. Perusing the records of the inquiry conducted against the applicant, it is clear that, till the 11th meeting, the proceedings of inquiry were conducted as per law and in accordance with the principle of natural justice. The applicant was present in all the meetings and stages of the Inquiry. It has been submitted by the applicant that he could not cross-examine the witnesses as they were not present during the stage of Cross-Examination. Appreciating the Para-3 of the minutes of the 11th Meeting of the inquiry proceedings, it has been clearly recorded about presence of the witnesses and sufficient opportunity having been given to the applicant to cross examine them. However, it clearly emerges from Page No. 485 of the Rojkam qua the produced records of Inquiry Proceedings that when an opportunity was accorded to the applicant to cross examine the witnesses, instead of making use of the opportunity, the applicant left the Inquiry-Room. In these circumstances, the argument furthered on behalf of the applicant that he could not cross examine the witnesses due to their absence during the Inquiry Proceedings is not at all corroborated by the produced records and recorded minutes. In the minutes of the 12th meeting, i.e. Inquiry-Meeting dated 01/11/2013, the applicant has recorded his objection in his handwriting after perusing the minutes. In view of this fact, it is established that the applicant was present in the meeting and he has



endorsed the minutes of 12th meeting after reading the same. Thus, perusing the records of the Inquiry Proceedings, it is established that the applicant was given sufficient and reasonable opportunity by the Inquiry Committee to defend himself and cross examine the witnesses. Further, it has been submitted on behalf of the applicant that no witness' signature has been obtained by the Inquiry Committee on any of the documents of Inquiry endorsing their presence in the Inquiry-Meeting for the Cross-Examination. Perusing the records of the Inquiry Proceeding and as submitted by the Learned Advocate for the Respondent, there is no practice of obtaining signatures of witnesses produced in an Inquiry Proceeding to record their presence. Under such circumstances, the argument made on behalf of the applicant is inadmissible wherein he averred that as no witness signature has been obtained in the Inquiry Proceeding and as no such witness was present for the cross examination during the Inquiry, the applicant has not been given an opportunity to cross examine the witnesses. Therefore, any of arguments to the fact that the applicant was not provided a reasonable opportunity of defense by the Inquiry Officer in accordance with the principles of natural justice during the Inquiry Proceedings conducted by the institute does not appear acceptable, and the Inquiry proceedings. conducted against the applicant by the respondent's Inquiry Committee are held to be legal and fair. Furthermore, the applicant has not challenged the legality and propriety of the Inquiry proceedings. In addition, no representation has been made even before the Tribunal regarding the legality or propriety of the Inquiry conducted against the



applicant. Under such circumstances too, the Inquiry proceedings conducted by the Inquiry Committee against the applicant are held to be reasonable and legal.”

(emphasis supplied)

17. This Court has also gone through the minutes of the 11th and 12th meetings and there is nothing to observe that the view taken by the Tribunal is perverse, which requires any interference by this Court while exercising its powers under Articles 226 and 227 of the Constitution of India. It is well settled that in the matter like the present one, unless any order passed by the Tribunal is *ex facie* illegal, perverse, and/or contrary to the provisions of law, in other circumstances, this Court should not interfere with the findings/reasons assigned by the Tribunal, which is a plausible view. In absence of any perversity found in the order of the Tribunal, this Court should not interfere with such order.
18. As observed above and after minutely going through the reasons assigned by the Tribunal in its impugned order as well as upon perusal of the relevant evidence forming part of the record and proceedings, I am of the view that the principle of natural justice was observed by the inquiry officer during the



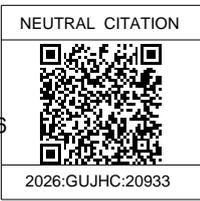
course of inquiry. There was no reason for Teacher to walk out in the midst of meeting and later on complain of non-receipt of evidence, etc.

19. It also requires to be noted here that the school is a minority institution and there are no rules and regulations framed under the Act, 1972, which cast duty upon the school to conduct the inquiry in the manner prescribed under such rules. At least, nothing of such sort was brought to my notice by the learned advocate for the Teacher.
20. Thus, in view of the aforesaid, I am of the view that the principle of natural justice has been duly observed during the course of inquiry. ***Point No. 1 is answered accordingly.***

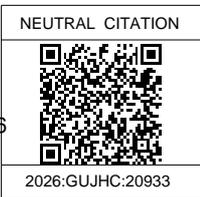
POINT NO.2:

21. As far as the authority of Mr. Raj to serve the order of dismissal upon the petitioner is concerned, the Tribunal has examined this aspect in Para 18 of its impugned order, which reads thus:

“18. Learned Advocate Shri S.C. Desai for the applicant has argued that, as the person who signed the Dismissal Order of the applicant is not vested with the authority or



power to sign such an order, the Dismissal Order shall be quashed and set aside and the applicant should be given the benefits admissible to him. He further averred that, Shri M.G. Raj who issued the Dismissal Order does not hold any office in the Respondent Trust or the institute, i.e. he was not holding any post in the Trust or the school at the time of signing the Dismissal Order. It is true that the second Show-Cause Notice and the penalty-order issued to the applicant were signed by Shri Raj. The applicant was appointed on 13/02/2006. The stated Appointment Order is signed by Shri M.G. Raj and Shri Raj has also signed the second Show-Cause Notice and the Dismissal Order as the Appointing Authority. However, perusing the records produced, it appears that, on the day of signing the order, Shri Raj was neither holding any office in the school or the Board of Trustees nor was he authorized. But, perusing the resolution of the School-Board, produced at Page No. 581 of the records, Shri M.G. Raj had been vested with the power and authority by the school to undertake necessary procedure against the applicant and Shri M.G. Raj had issued the second Show Cause Notice to the applicant in exercise of such powers and later, he has issued the Dismissal Order to the applicant. As per law, an appointing authority is not concerned with a person, but it is concerned with an office. Under such circumstances, when Shri M.G. Raj issued the Show Cause Notice and the Dismissal Order to the applicant with his signature, he was not holding any office. Therefore, Shri M.G. Raj cannot be considered competent to issue the second Show Cause Notice and the Dismissal Order of the applicant in capacity of the appointing authority. A



person holding any appointment and authority in the Trust on the given date can only be considered competent to issue the second Show Cause Notice as well as the Dismissal Order. Under such circumstances, the second Show Cause Notice issued to the applicant and the Dismissal Order cannot be considered lawful. We have gone through the Judgments of the Hon'ble High Court of Gujarat and the Hon'ble Supreme Court, relied on by Learned Counsel Shri Nanavati for the Respondent. However, as the facts of the Judgments are different from the case on hand, the same are not applicable to the present case and therefore, the Respondent's argument in this regard is not admissible. Under these circumstances, as the second Show-Cause Notice and the Dismissal Order by the concerned Shri M.G. Raj as the appointing authority was issued on the basis of the resolution by the Board of Trustees, it is not as per the rules and as per law and therefore, it is liable to be set aside. It would be fair, just and lawful if the case is remanded back to the School Board to decide it as per the rules after a competent authority issues the second Show-Cause Notice to the applicant afresh and gives him sufficient and reasonable opportunity to give an explanation.”

(emphasis supplied)

- 22.** It is incorrect to say and accept the arguments of Mr. Nanavati, learned Senior Counsel, that the Tribunal has not taken into account the resolution of the governing body dated 09.12.2013, inasmuch as the Tribunal has, in fact, taken into account such



resolution, which was available at page No. 581 in the record and proceedings of the case. It is true that the governing body of the school, vide its resolutions dated 18.11.2013 and 09.12.2013, decided to serve show-cause notice with the proposed punishment of dismissal to the Teacher and decided to dismiss the service of Teacher, respectively. Accordingly, Mr. Raj was authorized to issue such show-cause notice and order of dismissal, respectively. The aforesaid resolutions dated 18.11.2013 and 09.12.2013, read as under:

"RESOLUTION

A meeting of the Governing Body of the Ahmedabad Jesuit School's Society was called urgently on 18th November 2013 at Newman Hall with the President in the Chair, at which a quorum was present to discuss about the inquiry report dated 01.1.2013 submitted by inquiry officer who has conducted an inquiry against the charges levelled against Biju Jose Vadaken, an Asst. Teacher of St. Xavier's High School, Loyola, Higher Secondary Section, Science Stream.

On bare perusal of the inquiry report, submitted by the inquiry officer, it is revealed that the management has examined as many as 11 witnesses and from the report of the inquiry officer, it is further revealed that though the ample opportunity was given to



the delinquent employee to cross examine the said witnesses and to give his defence statement, the delinquent employee has refused to do so, however, the inquiry officer has on the basis of this deposition and the documentary evidence, held that he delinquent employee is guilty of the charges levelled against him.

Considering the resolved that the inquiry report submitted by inquiry officer dated 01.11.2013 is accepted in Toto.

Considering the seriousness of the charge, it is further resolved that the show-cause notice with the proposed punishment of dismissal may be issued to Biju Jose Vadaken and Fr. M.G. Raj SJ is authorized to issue such show cause notice.

Certified that the above is the true copy of the Resolution.

Date: 18.11.2013

Place: Ahmedabad.

**TRUSTEE/TREASURER
THE AHMEDABAD JESUIT SCHOOLS
SOCIETY"**

"RESOLUTION

A meeting of the governing body of the Ahmedabad Jesuit Schools Society was called urgently today at 9 a.m. at Newman Hall with the president on

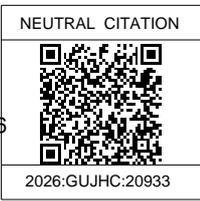


chair, at which a quorum was present to discuss about the final action to be taken against Mr. Biju Jose Vadaken an Asst. Teacher of St. Xavier High School, Loyola, Higher Secondary Section, I Science Stream.

Fr. M.G. Raj S. J. informed the governing body that pursuant to the resolution dt. 18th November 2013 a show cause notice for the proposed punishment of dismissal along with the inquiry report submitted by the inquiry officer dt. 1st November 2013 were served upon Biju Jose Vadaken on 21 November 2013 by Reg. Post and the acknowledgment receipt delivered by the postal department indicate that the said show cause notice was received by him on 22nd November 2013.

Mr. Biju Jose Vadaken was called upon to show cause within 15 days as to why he should not be dismissed as an Asst. Teacher of St. Xavier High School (Higher Secondary Section). Mr. Biju Jose Vadaken has not tendered any explanation to the above mentioned show cause notice within the stipulated time.

Considering the fact that in a departmental inquiry held against him where he was held guilty for all the charges levelled against him and no explanation has been tendered to the show cause dt. 21 November 2013 and also considering the seriousness of the charges it is resolved that Mr. Biju Jose Vadaken is to be dismissed from service as an Asst. Teacher of St. Xavier High School (Higher Secondary Section).



Fr. M.G. Raj S.J. is authorised to pass order of dismissal against the said teacher Mr. Biju Jose Vadaken.

Date: 09/12/2013

Place: Ahmedabad

*SECRETARY/TRUSTEE/TREASURER
THE AHMEDABAD JESUIT SCHOOLS
SOCIETY"*

(emphasis supplied)

- 23.** The copy of the resolution dated 09.12.2013, whereby, Mr. Raj was authorized by the governing body, would suggest that though the meeting of the governing body chaired by the President at which a quorum was present, to discuss the final action to be taken against Teacher, but the resolution is only signed by one person and it is not clear that who has signed such resolution, as the seal of the Secretary/Treasurer/Trustee of the School is affixed on at the bottom of the resolution. The same was the case in the resolution dated 18.11.2013.
- 24.** As per the Rules and Regulations of the School, more particularly, Rule 11 authorizes the Managing Board to delegate its power to the head of the institution. It is not disputed during the course of arguments that Mr. Raj was

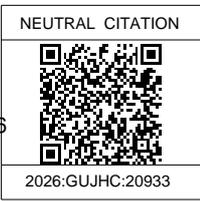


neither a Trustee nor the Principal when he served the final show-cause notice and the order of dismissal upon Teacher. Since the resolution dated 15.06.2005 was not placed before the Tribunal and is now submitted by the school in its petition at Annexure K - page No. 111, it cannot be looked into by this Court. As per Section 36(1) of the Act, 1972, the service of Teacher shall be terminated by the Manager. As discussed above, the Manager is already defined in Section 2(j) of the Act, 1972. Undoubtedly, the governing body of the school can be considered as a body of persons in charge of control/management of the school, but by no stretch of imagination Mr. Raj can step into the shoes of the management as defined under the Act, 1972. So far as the provisions of the Act, 1972, are concerned, there is no power of delegation available to such a Manager so as to delegate his power in favour of another person. Likewise, as per the Rules and Regulations of the School, the Managing Board can delegate its power to the heads of the institution and not to other persons. Furthermore, the relevant resolution dated 09.12.2013 authorizing Mr. Raj to pass an order of dismissal is only signed by one person, though the resolution depicts that it



was chaired by the President with a quorum of other persons, but actually, they have not signed the resolution.

- 25.** It is also to be noted that though Teacher could not respond to the said final show-cause notice within 15 days' period granted to him, but prior to passing of the said resolution dated 09.12.2013, his reply was already received by the school; however, it appears that the same was not considered and taken into account by the governing body of the school.
- 26.** Thus, considering the aforesaid peculiar facts and circumstances and upon appreciating the findings recorded by the Tribunal in Para 18 of its impugned order, I am of the view that the view taken by the Tribunal is neither erroneous nor perverse, which does not require any interference by this Court in so far as remanding the matter back to the School management for issuance of a fresh show-cause notice and to pass an appropriate order of punishment upon receipt of reply from Teacher is concerned.
- 27.** According to my view, neither final show-cause notice dated 21.11.2013, nor the order of dismissal dated 09.12.2013, passed



by Mr. Raj, can be said to be in consonance with the provisions of the Act, 1972. ***Point No. 2 is answered accordingly.***

CONCLUSION:

- 28.** In view of the foregoing observations, discussions, and reasons, I do not find any merit in any of the petitions; rather, I find that the order of the Tribunal is just and reasonable, and no perversity is found in it. Since both these petitions lack merit, they are liable to be dismissed, and accordingly, they are dismissed. Rule is discharged. There shall be no order as to costs. R&P to be sent back to the Tribunal forthwith.

(MAULIK J. SHELAT, J)

FURTHER ORDER

After pronouncement of the judgment, the requesto made by Mr. Vandan Baxi, learned Advocate appearing on behalf of Nanavati & Nanavati for the petitioner of Special Civil Application No.22226 of 2019, to stay this judgment for some time. Considering the fact that matter is of the year 2019 and in view of the reasons assigned by this Court, the request is rejected.

(MAULIK J. SHELAT, J)

NILESH