HUSENBASHA RAHAMAN NADAF
Signed by HUSENBASHA RAHAMAN NADAF
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2115 OF 2005

1. Ambegaon Taluka Vidya Vikas Mandal,]
Ghodegoan, Tal. Ambegaon, Dist. Pune.]

2. The Principal,]
Shri. Muktai Prashala Pimpalgaon,]
Tal. Ghodegaon, Dist. Pune.] … Petitioners

Versus

1. Mr. Husen Kasam Shaikh]
Age: About 29 yrs. Occu: At present Nil]
R/at: Post Pimpalgaon (Ghode),]
Tal. Ambegaon, Dist. Pune.]

2. The Education Officer,]
Secondary Section, Zilla Parishad, Pune.]

3. The State of Maharashtra] … Respondents

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Mr. Kiran Bapat, Senior Advocate a/w. Mr. Samir Suryawanshi for the Petitioners.
Ms. Kumud Bhatia for Respondent No.1.
Ms. Kavita N. Solunke, Addl. G.P. a/w. Mr. S.L. Babar, AGP for Respondent Nos.2 & 3/State.

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CORAM : M.M. SATHAYE, J.
RESERVED ON : 19th JUNE, 2026
PRONOUNCED ON : 23rd OCTOBER, 2026

JUDGMENT :

1. By this petition Articles 226 & 227 of Constitution of India, the Petitioners (Management and School) are challenging Judgment and

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Order dated 03.02.2005 passed by Presiding Officer, School Tribunal, Pune Region, Pune in Appeal No.80 of 2001. By the said impugned order, the appeal filed by Respondent No.1 is allowed thereby setting aside dismissal of Respondent No.1 under order dated 20.10.2001, holding Respondent No.1 entitled to reinstatement in service as Peon from the date of dismissal with full back-wages and consequential benefits. The State Government is recommended to deduct the back-wages from grant payable to the Petitioner/Management and paid to Respondent No. 1.

BACKGROUND

2. Respondent No. 1 is an arts graduate. He was initially appointed as Junior Clerk w.e.f. 09.10.1995 to 31.03.1996 in the leave vacancy. He then came to be appointed as Peon w.e.f. 26.09.1997. He was transferred by order dated 30.01.1999. His request for posting back to earlier school was not considered.

3. According to Respondent No. 1, the President of the Petitioner/Management Mr. D. K. Kale was having grudge against him and it resulted into his harassment. He contended that sometime in April 2000, he suffered right-hip joint fracture and was required to take leave, but the President of the Management and Headmaster of the School refused to grant him leave and he was compelled to take leave without pay. He contended that in September 2000, applications were received by the Management from villagers, making allegations that he was having illicit relation with one lady-teacher working in the school and action was sought against him. He contended that explanation was sought, which was submitted by him.

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He contended that anticipating trouble, he decided to go on hunger strike to protest against harassment. He also issued legal notice to the Management which was replied.

4. According to the Management, instead of giving explanation sought, the Respondent No. 1 gave reply making allegations against the President and sent its copies all over the State, thereby bringing disrepute to the School and this amounted to misconduct. Hence, the Petitioner/Management decided to hold inquiry against Respondent No. 1. Charge-sheet was issued along with letter dated 12.03.2001. Sum and substance of charges is that acts of Respondent No. 1 were damaging the reputation of the Management and School amounting to misconduct.

5. Respondent No. 1 appointed his nominee. Inquiry committee was appointed. Six meetings were held from 03.05.2001 to 04.09.2001. The inquiry committee found Respondent No. 1 guilty by majority of 2:1. The nominee of Respondent No. 1 dissented. Findings of inquiry committee was intimated to Respondent No. 1 on 03.10.2001 and he was called upon to submit explanation which he submitted. By order dated 20.10.2001, services of Respondent No. 1 were terminated.

6. This resulted in Respondent No. 1 filing the said appeal under Section 9 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, of 1981 ('the said Act' and' the said Rules', for short). The Petitioner/Management filed reply/written statement contesting the appeal on merits. The Tribunal who heard and tried the appeal was pleased to allow it

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under impugned order as stated earlier.

7. Petition was admitted on 12.08.2005 and on condition of the Petitioner/Management depositing the back-wages awarded by the School Tribunal in the Court within stipulated time, the impugned order of the Tribunal was stayed.

8. The Petitioner/Management pursuant to the directions of the Court, has filed affidavit dated 10.06.2026 stating that the Petitioner has deposited the back-wages as per order of the Court while granting interim relief. It is also stated that the post in question has been kept vacant and the salary grant has not been utilized.

9. Learned Senior Advocate, Mr. Bapat appearing for the Petitioner/Management submitted as under.

9.1. That record clearly indicates that sufficient opportunity was given to Respondent No. 1 and there is no real prejudice caused to Respondent No. 1.

9.2. That the Tribunal has erred in holding that Mr. Shivaji H. Chilekar, Advocate by profession cannot be treated as a member of the Managing Committee. That the constitution of inquiry committee was proper and could not have been faulted.

9.3. That Respondent No. 1 has failed to show actual and real prejudice caused to him due to alleged defects in the procedure.

9.4. That the charges against Respondent No. 1 were serious in nature which had the effect of damaging the reputation of the school bringing unhealthy atmosphere amongst the employees and teachers

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working in the school and it also had adverse effect on the students taking education in the school.

9.5. That the Tribunal could not have relied upon the disowning of complaint by the employees, in as much as the Tribunal has lost sight of the fact that the employees were pressurized by Respondent No. 1 by lodging criminal prosecution against them and also pressurizing them through union and political persons.

9.6. That even conduct of Respondent No. 1 about giving notice of hunger strike to education authorities and minister is required to be noted.

9.7. That when Respondent No.1 was called upon to give explanation in respect of complaints made by the villagers, Respondent No. 1 made allegations and sent it all over the State amounting to misconduct.

9.8. That Respondent No. 1 went to the concerned lady teacher's house to pressurize her to file complaint against the Management and when he failed to persuade her and her husband, Respondent No. 1 created scene and the husband of the concerned lady teacher was required to file FIR with the police, in which Respondent No. 1 was arrested and was required to take bail.

9.9. That Respondent No. 1 filed a Criminal Case No. 57 of 2001 against 4 employees who had signed complaint and also against the President of the Petitioner/Trust - Mr. D.K. Kale alleging offence punishable under Section 500 read with Section 109 and 34 of the Indian Penal Code, 1860 (‘IPC’, for short) for defamation, in which

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they are acquitted under Order dated 01.09.2003. The complaint was on the basis of imputation about character of Respondent No. 1. That even Criminal Appeal No.617 of 2005 filed by Respondent No. 1 challenging the order of acquittal is also dismissed by order dated 12.12.2022 by this Court.

9.10. That charges were specific about bringing disrepute to the institute/school amounting to misconduct.

9.11. That Respondent No.1 has led evidence and the findings and conclusions recorded by the inquiry committee, supported by evidence and material on record, could not have been disturbed by the Tribunal.

9.12. He submitted that if the documents on record are considered, then overall it can be seen that principles of natural justice were followed and no real prejudice has been caused to Respondent No. 1.

9.13. He finally submitted that this is not a case of 'no notice, no opportunity and no hearing' and therefore the Tribunal was not justified in interfering and therefore the impugned order requires interference.

9.14. Lastly he submitted that the place where school is situated is a small village place and after the relationship is so much soured, Respondent No. 1 should not be reinstated. He relied on following judgments in support of his case.

(i) State Bank of Patiala and Ors. Vs. S. K. Sharma (1996) 3 SCC 364.

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(ii) Secretary, Lucy Sequeira Trust and Anr. Vs. Kailash Ramesh Tandel and Ors. (2019) 6 SSC 155.

(iii) Surabhi Keshav Sahu Vs. State of Maharashtra & Ors. Bombay High Court, Writ Petition (L) No.29423 of 2022, judgment dated 28.03.2025.

10. *Per contra,* learned counsel Ms. Bhatia for Respondent No.1 relying on affidavit-in-reply of Respondent No.1 affirmed on 02.05.2005, submitted as under.

10.1. That the Petitioner/Management has not come before the Court with clean hands. That the so called complaints against Respondent No. 1 were fraudulently obtained by the Petitioner/Management. That some of the signatories of the complaints have later on clarified that their signatures were not voluntary and were obtained by misguiding them. That some of the so called complainants have even stated subsequently that they have not signed on the complaint.

10.2. That the lady teacher with whom it is alleged that Respondent No. 1 had illicit relationship, has given statement in Criminal Case No. 57 of 2001 denying illicit relations and that she had family relationship with Respondent No. 1. That the aspect of an alleged illicit relationship is raised only with an intention to prejudice the mind of the Court.

10.3. That the document of 08.12.2000 produced along with petition recording that Respondent No.1 was called for explanation after complaints, when he has refused to give written explanation. She submitted that this document is fabricated and is not signed by Respondent No. 1.

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10.4. That compliance with statutory requirement under Rule 36 of the said Rules is mandatory and cannot be avoided. That under Rule 36(1) of the said rules, the Petitioner/Management was expected to issue letter of allegation and showcase notice calling for explanation and explanation was required to be considered by the Petitioner/Management. However, this stage of inquiry is dropped by the Petitioner/Management which fatal departure from procedure vitiating the inquiry.

10.5. That the stage of constitution of inquiry committee comes first as per Rule 36(2) (3) and (4) and stage of issuing charge-sheet comes thereafter as per Rule 37(1). However, in the present case, the Petitioner/Management has issued letter dated 12.03.2001 as covering letter of sending charge-sheet and asking Respondent No. 1 to nominate representative. That this vitiates the inquiry.

10.6. That the Petitioner/Management has deliberately avoided to make any charge about alleged illicit relationship with lady teacher as the whole story was concocted against Respondent No. 1.

10.7. That in the police case filed against Respondent No. 1, the said lady teacher has not stated anything against Respondent No. 1.

10.8. That the Tribunal has considered the evidence on record and has come to the right conclusion that the procedure was not followed and inquiry is vitiated.

10.9. She urged that re-appreciation of evidence is not permitted and no interference is required.

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10.10. That Respondent No. 1 suffers from disability of leg and he was harassed even before inquiry in question. That presently Respondent No. 1 is working as a labour and is about 55 years old as on today and can still be reinstated. She relied on the following Judgment in support of her case :

(i) Vidya Vikas Mandal and Anr. Vs. Education Officer and Anr. 2007(3) Mh.L.J. 801.

11. Learned AGP contended that since Respondent No. 1 has served for less than 5 years (from 26.09.1997 to 20.10.2001) there is no provision for giving pensionary benefits on the basis of notional reinstatement and therefore Respondent No. 1 cannot be paid any pensionary benefits. She submitted that if the Management has kept the post vacant, it is an act detrimental to students' education and therefore should be taken serious note of by this Court.

THE NEW TREND

12. After the Court heard learned counsel for the parties at length, Respondent No.1 (who was present in the Court throughout the hearing) insisted that he should be heard in person. When the Court indicated that since he has engaged a lawyer who has ably argued the matter fully in support of his case, further hearing may not be necessary. However, Respondent No. 1 insisted that he must be heard. In order to avoid even the remotest possible prejudice to Respondent No. 1, the Court heard Respondent No. 1 for some time and the matter was closed for judgment.

13. But surprisingly, Respondent No. 1 was not satiated.

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14. Even thereafter, Respondent No. 1 has chosen to file representations addressed to the Chief Justice making statements that his lawyer has not argued the case properly. Respondent No. 1 has filed as many as three such representations with documents.

15. The Sum and substance of the representations given by Respondent No. 1 is that he is the sole breadwinner for the family and his mother and sister have expired leaving behind 3 children and his brother is also disabled (deaf and dumb). He has annexed disability certificate of his brother and death certificates of his mother and sister. He has narrated the long and checkered history of the litigation and has prayed for reinstatement with full back wages. However, he has also stated that considering overall situation, he has no desire to serve in the organization at all, and if his request is accepted, he will voluntarily resign from the service. He has stated that he should be held eligible for pension and full benefit. He has claimed that he is entitled to compensation of Rs. 2 crores. Respondent No.1 has made loose statements such as his advocates were managed and the Petitioner/Management has tried to kill him 5 times. He has also stated that he is indebted and he and his family are living in precarious conditions on wages. He has also stated that if his request is accepted he will not file any defamation case about proceedings in Criminal Appeal No.671 of 2005 and all cases will be disposed of.

REASONS AND CONCLUSION

16. I have considered rival submissions and perused the record.

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17. At the outset, it is important to note that even though Respondent No. 1 has resorted to filing representations, making various allegations against his lawyer and raising disputes in the manner narrated above, the Court cannot lose sight of the fact that in the limited writ jurisdiction invoked, only the legality of the impugned order is to be seen.

18. General and omnibus submissions made by party-in-person by writing applications and representations after the case is closed for judgment on hearing his advocate fully, cannot be entertained.

19. It has come on record that Respondent No. 1 had resorted to method such as giving notice of hunger strike etc. in the past and the present attempt to file multiple representations in a case closed for judgment, appears to be nothing but further attempt to invoke sympathy and create confusion in the mind of the Court.

20. Although Respondent No. 1 may be in financially precarious condition and may have suffered loss of family members, the said aspects, assuming them to be true, cannot cloud the judgment of the Court which must be made on the basis of material on record that was considered by the Tribunal.

21. It is important to note that Respondent No. 1 has permitted his advocate to argue the matter fully and thereafter has chosen to not only to insist with the Court that he must be heard in person but has also chosen to file applications and representations addressed to the Chief Justice making allegation against his advocate that case is not properly argued. Such conduct cannot be countenanced, and in any

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case, cannot be permitted to cloud the judgment of the Court.

22. It is not out of place to mention here that Respondent No. 1 has stated that if his request is accepted, he will not file any case or claim of defamation in respect of proceedings in Criminal Appeal No. 617 of 2005. Said appeal was filed by Respondent No. 1 in this Court challenging the order of acquittal of the President of Petitioner/School and other employees. It has come on record that said appeal is already dismissed by this Court on 12.12.2022 after hearing both sides. Having failed in his complaint against the President of the Petitioner/Management and other employees of the school alleging defamation, Respondent No.1 is now stating that he will not file any case of defamation if his request is accepted. Such submission is only stated to be rejected.

23. Be that as it may. The Court will discount the conduct of the the Respondent No. 1 as he might have acted in frustration.

BACK TO THE MERIT OF THE CASE

24. Now, returning back to the case at hand so far as impugned order is concerned, it is necessary to note the law in respect of challenge to the findings of the inquiry committee.

25. Useful reference can be made to paragraph 33(3) of **State Bank of Patiala (Supra)**. It is held by the Hon'ble Supreme Court that in the case of alleged violation of the procedural requirements, the procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent and violation of each and every procedural provision cannot be said to automatically vitiate the

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enquiry held or order passed. It is further held that except cases falling under 'no notice, no opportunity and no hearing' categories, the complaint of violation of procedure should be examined 'from the point of view of prejudice' namely whether such violation has prejudiced the delinquent in defending himself properly and effectively. It is further held that if it is found that the delinquent has been so prejudiced, then appropriate order to repair and remedy the prejudice can be passed. However, it is also held that if no prejudice is established, no interference is required.

26. In **State Bank of India and Ors. Vs. Bidyut Kumar Mitra and Ors. (2011) 2 SCC 316,** the aforesaid law has been reiterated in paragraph No. 37 of the said Judgment. It is held that pleading and proof is necessary to show prejudice.

27. Recently the Division Bench of this Court in **Surabhi Keshav Sahu (Supra)** has considered **State Bank of Patiala V/s S. K. Sharma (Supra)** and has reiterated that the test is "all things taken together whether the delinquent had or did not have a fair hearing ?". This has to be considered.

28. Therefore, it is clear that for the Tribunal or this Court to interfere in the findings of the inquiry committee, the only material consideration is whether the delinquent has suffered real prejudice.

29. So, in the facts of the present case, let us now consider if Respondent No. 1 was given sufficient opportunity to defend his case and whether any real prejudice has caused to him due to alleged non-

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compliance with the procedural rules. In that regard, following aspects are necessary to be noted:

(i) Respondent No. 1 has received the copy of charges which was replied by letter dated 19.03.2001. Respondent No. 1 in his affidavit-in-reply has himself stated that he has replied to the charge-sheet by issuing his letter denying the charges.

(ii) Respondent No.1 has duly nominated his nominee on the inquiry committee.

(iii) By letter dated 06.10.2001, copy of inquiry committee's report and decision was sent to Respondent No. 1 calling for explanation.

(iv) The proceedings of the Inquiry Committee are produced on record which shows that on 03.05.2001, the first meeting was held where it was decided to call Respondent No.1 and his family members for evidence and it was further decided to call 6 villagers who had given complaint. In that view of the matter, the observations of the Tribunal that in the first meeting itself conclusion was drawn about guilt of Respondent No. 1, is not correct.

(v) The next meeting was held on 10.06.2001, when evidence of Respondent No.1, his mother, sister and sister-in-law was taken. In the same meeting, the President of the management Mr. D.K. Kale was also examined.

(vi) Thereafter, on 29.07.2001, the letter given by Respondent No.1 was read out and considered.

(vii) For all three meetings, the representative nominee of the

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Respondent No.1 - Mr. Murlidhar Bijraj Kankariya was present.

(viii) The Tribunal has recorded that six meetings took place.

(ix) The Respondent No.1 has also given his further explanation under communication dated 13.10.2001.

30. Perusal of the impugned order shows that the Tribunal has gone into the complaint letter received from the villagers, which resulted into the inquiry. The Tribunal has held that in that complaint, signature of one of the person is appearing at 2 places and once in Marathi and another in English and therefore, the authenticity of the complaint is doubtful. The Tribunal has also held that out of many who had signed the complaint, 4 persons had stated later on that they do not admit the contents of the complaint and/or the President of the Petitioner/Management has obtained their signatures. The Tribunal has considered statements made by witnesses in the criminal proceedings about the alleged illicit relationship between Respondent No. 1 and the lady teacher. The Tribunal has held that at no stage of the inquiry, evidence of the concerned lady teacher was recorded. The Tribunal has held that the Management was at pains to establish nexus between Respondent No. 1 and his so called illicit relation with lady teacher. The Tribunal has not discussed anything about the merits of the inquiry conducted (about misconduct and bringing disrepute to the school) and has directly held in paragraph No. 24 of the impugned order that the findings of the inquiry committee are baseless.

31. Therefore, it is clear that the Tribunal has proceeded on the

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footing that 'the alleged illicit relationship between Respondent No. 1 and a lady teacher' is the charge, which is not properly proved. Here lies the problem. It is most important to note that charge was misconduct by sending reply dated 19.01.2001 (to the letter of Petitioner/ Management dated 12.01.2001 asking for explanation about complaint from the villagers) resulting in disrepute to the institution amounting to misconduct. The charge was also about making baseless allegations against the President of the Management under letter dated 19.01.2001. The charge was also in respect of trying to pressurize the concerned lady teacher and his family members by using abuse and threatening language resulting in complaint filed by husband of the lady teacher resulting in arrest of Respondent No. 1 amounting to misconduct and defamation and bringing disrepute to the institution.

32. Therefore, it is clear that the charges were not in respect of the illicit relation between Respondent No. 1 and the said lady teacher *per se*, but the charges were in respect of conduct of Respondent No. 1 making baseless allegations against the President of the Management and sending it all over the State bringing disrepute to the institution amounting to misconduct.

33. Perusal of reply given by Respondent No. 1 dated 19.01.2001 indicates that Respondent No. 1 resorted to sending copies of the Reply to Ministers, Education Minister, various teachers' associations, police authorities and Education Authorities. Bare perusal of the reply sent by Respondent No. 1 to the explanation sought, would show that Respondent No. 1 resorted to a method of raising counter allegations

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and making the whole dispute about known to virtually entire State. Further, the Respondent No. 1 then issued legal notice, reiterating the threat of sitting on hunger strike and also threatening criminal action. These actions adopted by Respondent No. 1 clearly establish that Respondent No. 1 blew the case out of proportion and allegations against the president of Petitioner/Management involving the school was made known to various entities as explained above and since this resulted in bringing disrepute to the school and management, charges were framed.

34. Learned Senior Advocate for the Petitioner is therefore right in submitting that the committee was not really concerned with whether there was illicit relation between Respondent No. 1 and a lady teacher, but the committee was concerned with whether the actions of Respondent No. 1 has resulted in disrepute to the institute amounting to misconduct. Obviously therefore even the Tribunal was not and could not have been really concerned with whether alleged illicit relation between Respondent No. 1 and a lady teacher was proved or not, but should have been concerned with whether the actions of Respondent No. 1 has resulted in disrepute to the institute amounting to misconduct. In that view of the matter, the entire approach adopted by the Tribunal appears to be perverse.

35. Tribunal has held that first meeting of inquiry committee held on 03.05.2001 violates Rule 36(2)(a) of the said Rules because it is attended by 4 members. The Tribunal has held that according to Rule 36(2), the inquiry committee consists of 3 members and therefore, attendance of 4th member violates the Rules. It is important to note

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that the required 3 members of the inquiry committee was attending and therefore the presence of 4th member cannot be taken to vitiate the entire inquiry proceedings.

36. The second fault found by the learned Tribunal is that the Management has sent charge-sheet along with letter dated 12.03.2001 asking Respondent No. 1 to give his nominee, meaning thereby that inquiry committee should have been first formed and then charges should have been framed. The Tribunal held that this act of sending charge-sheet along with letter asking for nomination is violative of the Rules 36 and 37 and it is against the spirit of Rules. The Tribunal has also held that Advocate Chilekar was an advisor of the Management and therefore, he cannot be treated as a member of the Managing Committee, which is violative of Rule 36(2) of the said Rules.

37. From the aforesaid circumstances, it is clear that the Respondent No.1 has been given sufficient opportunity to defend himself and no real prejudice was caused. For the same reason, it cannot be said that the alleged violation of Rules are fatal to the entire proceedings of the inquiry committee. Record shows that Respondent No. 1 has adopted the approach of not tendering explanation when called for. Therefore, no real prejudice is shown to have been caused to Respondent No. 1. This is not a case of 'no notice, no opportunity and no hearing' and the crucial test as to 'whether all things taken together, the delinquent had or did not have fair hearing?' must be answered in 'Yes'.

38. In the aforesaid facts and circumstances and for reasons

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indicated above, the impugned order is found perverse and therefore, cannot be sustained. Interference is required. Petition therefore succeeds.

39. The impugned order has remained stayed from 12.08.2005 for last 21 years. The Respondent No.1 has served only for about 4 years and 1 month. There is nothing on record to establish conclusively whether Respondent No.1 was or was not gainfully employed in the meantime. There is word against word. Also, it is difficult to believe that Respondent No.1 did not do anything for such a long period of time. In fact in his representations, he has stated that he has been living on wages. State has taken clear stand that no benefit can be given.

40. In the net result, **Writ Petition is allowed.** The impugned order dated 03.02.2005 is quashed and set aside. Respondent No. 1 is at liberty to withdraw the amount deposited by the Petitioner/Management in this Court pursuant to order dated 12.08.2005, with accrued interest, if any. Rule is made absolute in above terms. No order as to costs.

41. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)

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