

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 599 OF 2005

Kalyani D/o Yogesh Shah,
Age : 16 Years, Occup.: Student
Since minor U/g of Father
Yogesh Shah S/o Moolchand Shah
Age: 40 Years, Occupation : Business,
R/o. Purna, Tq. Purna,
District Parbhani

...PETITIONER

VERSUS

1. Maharashtra State Board of Secondary
& Higher Secondary Education, Aurangabad
Divisional Board, Aurangabad
Through its' Divisional Secretary,
Railway Station Road,
Aurangabad.
2. The Head Master,
Jawaharlal Neharu English High
School, Purna, Dist. Parbhani.

...RESPONDENTS

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Mr. S.G.Chapalgaonkar, Advocate for Petitioner;
Mr. D.V. Soman, Advocate for Respondent No.1;
Mr. P.V. Khiste, Advocate for Respondent No.2.

...

CORAM: S.S.SHINDE

AND

P.R.BORA, JJ.

Date: June 8th, 2015

Date of reserving
the judgment: 20.3.2015
Date of pronouncing
the judgment:8/6/2015

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JUDGMENT (Per P.R.Bora, J.) :-

1. The petitioner has filed the petition seeking following reliefs:

"a. This Writ Petition may kindly be allowed.

b. By way of writ of mandamus or any other appropriate writ or directions, the Respondent may kindly be directed to declare the result of the Petitioner for SSC examination held in March 2004, forthwith.

b-1. Pending hearing and final disposal of the writ petition, Divisional Secretary SCC Board may kindly be directed to provisionally declare the result of the Petitioner for SSC Exam. March 2004.

b-2. The Notification issued by the Respondent dated 28.03.2005 bearing No.ADB/UNF/SSC/March-2004, 4470, Aurangabad thereby canceling the performance of the Petitioner for S.S.C. Examination March, 2004 may kindly be quashed and set aside.

b-3. The action taken by the Respondent No.2 of removal of the name of the Applicant U/s. 56.5 from the Jawaharlal Nehru English High School Purna in pursuance of the directions of the Respondent Board, may also be quashed and set aside.

c.4602 The Respondents may kindly be directed to pay Rs.1,00,000/- towards ex-gratia compensation to the petitioner for loss of her academic year.

d. Any other relief, for which the Petitioner is entitled for, may kindly be granted."

2. By filing the present petition, the petitioner has questioned the notification dated 28.3.2005, issued by respondent no.1 and has prayed for setting aside the said notification. The petitioner has also challenged order dated 28.6.2004 passed by respondent no.2. Vide order dated 28.3.2005, respondent no.1 has debarred the petitioner from appearing for SSC Examination upto October 2005 whereas, vide order dated 28.6.2004, respondent no.2 has removed the name of the petitioner from attendance register and expelled her from the school by invoking Section 56.5 of the Secondary Schools Code.

3. From the pleadings in the matter, it is revealed that the petitioner had appeared for SSC examination held in March, 2004. 1603 answer sheets of subject Geometry of the said examination were delivered to one Madhukar Parshuram Joshi, a teacher working in respondent no.2 school of which the petitioner was also a student, for checking the same through teachers, namely, A.W.Kulkarni, K.R.Kalyankar, R.A.Patil and K.D.Chavan. On completion of the job of checking, through the aforesaid teachers, Madhukar Parshuram Joshi was supposed to return the said papers to the Divisional Board. It is alleged that Shri Madhukar Parshuram Joshi, instead of getting checked the said papers

through the afore mentioned teachers, got the said work done through some of his students. It is further alleged that the said fact was flashed as a news item through electronic and print media. On publication of such news item, inquiry was initiated by the Divisional Board. As a result of the inquiry the Board took an action against the said teacher, namely, Madhukar Parshuram Joshi, as well as against the present petitioner. On insistence from the Board, respondent no.2 also took action against the petitioner as aforesaid. As mentioned hereinabove, the actions taken by respondent no.1 Board and the action taken by respondent no.2 school are challenged in the present petition.

4. It is the contention of the petitioner that before taking the actions as aforesaid, neither any show cause notice was given to her nor any opportunity of hearing was given to the petitioner. It is the further contention of the petitioner that she has not committed any misconduct so as to suffer any action as has been taken by the respondents. It is the contention of the petitioner that, without any fault on her part, respondent no.1 cancelled her performance of the examination held in March, 2004, and debarred her from appearing for the said examination till October, 2005. It is the contention of the petitioner that she was

throughout a meritorious student and even in examination held in March, 2004, her performance could have been noteworthy. It is the further contention of the petitioner that because of wrongful actions taken by the respondents, her career has been ruined and she has been subjected to suffer hardship, mental torture and agony.

5. Shri Batesing Ematha Vasave has filed affidavit in reply on behalf of respondent no.1 whereas Mohammd Atiya Begum Md. Sattar has filed reply on behalf of respondent no.2. Respondent no.1 has supported the action taken, and has prayed for dismissal of the petition. Respondent no.2 has clarified that on insistence of respondent no.1 Board, it was constrained to remove the name of the petitioner from the school register.

6. Shri S.G.Chapalgaonkar, learned Counsel appearing for the petitioner, vehemently assailed the impugned orders. Learned Counsel submitted that the petitioner has not committed any misconduct as alleged by the respondents. Learned Counsel submitted that, in fact, if at all any misconduct was committed, it was by the concerned teacher, namely, Madhukar Parshuram Joshi, and not by the petitioner. Learned Counsel further submitted that there is no admissible evidence that the petitioner had any role in the alleged

misconduct or the misconduct committed by the said teacher. Learned Counsel further submitted that before taking the impugned action against the petitioner, neither show cause notice was issued to her nor any opportunity of hearing was provided. According to the learned Counsel, there was, thus, gross violation of principles of natural justice.

Learned Counsel further submitted that there is no provision under Secondary Schools Code and / or the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965, and the Rules and Regulations thereunder, which empowers the Board to cancel the result of any student for the misconduct which is not relating to the examination of the said student. Learned Counsel further submitted that the action of removal of name of the petitioner from the School Register was only on account of letter issued by respondent no.1 Board, and even before taking action of removal of the name, the school has not given any show cause notice to the petitioner and, thus, respondent no.2 has also grossly violated the principles of natural justice. Learned Counsel further submitted that because of the impugned orders, a permanent stigma has been attached on the career of the petitioner which will come in her way throughout her life if it is not removed.

7. On query made by us, we were informed that though an interim order was passed by this Court to provisionally declare the result of the petitioner, instead of declaring such result, respondent no.1 Board took the action of debarring the petitioner from appearing for SSC examination till October, 2005. It has to be stated that since the aforesaid action was subsequently taken after filing of the petition, the petitioner had sought amendment in the petition to challenge the said action and accordingly the said prayer was granted by the Court.

Learned Counsel for the petitioner further informed that during pendency of the present petition, the petitioner appeared for SSC examination after debarring period was expired and has successfully passed the said examination. We are further informed that subsequently the petitioner has prosecuted her further education and she has also been graduated. In view of the subsequent events, learned Counsel submitted that the prayer made in prayer clause B has become redundant. Learned Counsel further submitted that the petitioner is also not interested in the amount of compensation but she is certainly persuasive of her prayer for setting aside the notification dated 28.3.2005 as well as the action taken by respondent no.2 of expelling her from the school for the reason that both the

orders attach serious stigma on her career.

8. Learned counsel relying upon the judgment of the Division Bench of this Court in the case of Kobad Jehangir Bharda Vs. Parokh Sidhwa and others reported in 1990(2) Mh.L.J.883), submitted that the order of expulsion is wholly illegal. We have carefully gone through the judgment relied upon by the petitioner. Rule 56.5 provides that a pupil may be "expelled permanently or removed from the School for a specified period". The grounds on which these steps may be taken are-

- (a) Persistent insubordination; or
- (b) malpractices in connection with examination; or
- (c) act of serious indiscipline / misbehaviour; or
- (d) has, in the opinion of the Head of the School, an unwholesome influence on the fellow-pupils.

There is nothing on record to show that the petitioner can be held liable for any of the misconduct as enumerated above. Moreover, as we have already stated, in its say itself respondent no.2 has clearly averred that the action of expelling the petitioner was taken by it only on the insistence of respondent no.1 Board. In the above circumstances, the impugned action cannot be sustained.

9. We have carefully considered the submissions advanced on behalf of the parties. At the outset, it is to be stated that both the impugned actions are liable to be set aside for the reason that before taking such actions, principles of natural justice have not been followed. Admittedly, neither respondent no.1 Board nor respondent no.2 school had given any show cause notice to the petitioner nor had provided any opportunity of hearing to put forth her case. From the record it appears that merely relying on the Police statement allegedly given by the petitioner, the actions were taken by the respondents. Moreover, we are fully convinced that there is no admissible evidence brought on record by the respondents to show that the petitioner had played any role in the alleged misconduct committed by the concerned teacher, namely, Madhukar Parshuram Joshi. Further, no provision in the Act or the Rules or the Regulations under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965, or of the Secondary Schools Code has been brought on record by the respondents which empowers respondent no.1 Board to cancel the result of the petitioner and debar her from appearing for the SSC examination for the misconduct which is not relating to the examination of the petitioner. It is not the case of the respondents that any fraud or misconduct has been committed by the

petitioner relating to her own answer sheets or relating to her own examination. In such circumstances, the whole action taken by the respondents appears to be unsustainable. If at all any misconduct was committed, it was by the concerned teacher, namely, Madhukar Parshuram Joshi, and no blame can be attributed on the part of the present petitioner in absence of any cogent and sufficient evidence in that regard. We reiterate that both the impugned actions are based on the Police statement given by the petitioner which, admittedly, does not have any evidentiary value unless the same is legally proved in any proceedings before the Court. The petitioner has placed on record copy of judgment dated 18th May, 2012, in RCC No.30/2005 filed against the said Madhukar Parshuram Joshi. In the aforesaid criminal case, which was filed under Sections 420 and 426 of IPC, he has been acquitted by the competent Court. On perusal of the judgment in the said case, it is revealed that no evidence was produced on record in the aforesaid case so as to prove the misconduct of the said Madhukar Parshuram Joshi. There is no legal evidence on record even remotely showing involvement of the petitioner. Going ahead, even if it is assumed that the misconduct, as alleged against the petitioner that she checked / examined some of the papers of SSC examination held in March, 2004, she cannot be held guilty of

any misconduct which can make her liable to be debarred from appearing for the examination for the reason that the said misconduct is not relating to her own examination. For all aforesaid reasons, we are inclined to set aside both the impugned orders.

10. In the result, following order:

ORDER

a) The notification issued by respondent no.1 dated 28.3.2005 bearing No.ADB/UNF/SSC/March 2004/4470 is quashed and set aside.

b) The action taken by respondent no.2 vide their letter dated 28.6.2004 of expelling the petitioner from their school invoking Section 56.5 of the Secondary Schools Code also stands quashed and set aside.

Rule made absolute in above terms.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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AGP/wp599-05