

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3619 OF 2001
WITH
CIVIL APPLICATION ST. NO. 26245 OF 2014

Anilkumar Bhutajirao Wagh ...Petitioner

versus

The State of Maharashtra and others ...Respondent

.....
Mr. Ajay G. Talhar, Advocate for the petitioner/applicant
Mr. U.S. Mote, AGP for the respondent No.1
Mr. M.K. Goyanka, Advocate for the respondent Nos.3 and 4
.....

**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 13th JANUARY, 2015

P.C. :-

1. Heard. Civil application for restoration is allowed and disposed of. Writ petition No. 3619 of 2001 is restored to its original file and taken up for final hearing forthwith.

2. The facts leading to the present writ petition are as under:-

The petitioner was working as Junior Lecturer since 1998 with respondent No.3 J.E. School, Muktainagar. The said school is managed by respondent No.4 which is an educational society. The petitioner was also working as examiner for respondent No.2, which is Secondary and

Higher Secondary Board, Nashik Division, Nashik. The Board came to the conclusion that certain malpractice had been committed in the Board's examination and upon enquiry, they initiated action against the petitioner. The enquiry was conducted in presence of the petitioner and it was held that the petitioner was actively conniving in certain malpractice in Board examination. The Board therefore, took disciplinary action against the petitioner awarding him penalty of removing his name from the panel of examinations and also proposed to the employer that five increments of the petitioner should be stopped.

3. The employer, admittedly, without conducting enquiry as contemplated under the provisions of Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules, 1981 passed an order and stopped five increments of the petitioner w.e.f. 1.8.2001. This certainty amounting to the punishment. The Rules elaborately provide how the disciplinary action can be initiated and conducted against the employee of private schools and what kind of penalty can be imposed on such delinquent. There are two categories of penalties provided in Rule 31. One is of minor penalty which includes withholding of increment for a period of one year. The other is major penalty which includes termination etc. The penalty imposed on the petitioner does not fall within the parameters of Rule 31.

4. Besides that, penalty cannot be imposed without holding departmental enquiry as contemplated under Rule. No opportunity to

the petitioner was given calling upon him as to why such penalty should be imposed upon him. Admittedly, respondent Nos. 3 and 4 did not produce any evidence against the petitioner to such extent. In this view of the matter, it was necessary for respondent Nos. 3 and 4 either to initiate disciplinary proceeding against the petitioner or ask the Board as to why action was contemplated against the petitioner. Without application of mind, the impugned order appears to have been passed.

5. In the light of above, we are inclined to set aside the impugned order passed by respondent Nos. 3 and 4. However, we grant them liberty to consider the case of the petitioner de-novo for initiating disciplinary action as may be thought fit. The respondent Nos. 3 and 4 are directed to grant consequential benefits to the petitioner. They are however at liberty to take further action pursuant to the report of the Board dated 7.6.2001 (Exhibit "E").

6. The petition is disposed of.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)

rlj/