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

WRIT PETITION NO. 7184 OF 2004

YASHWANT TRYAMBAK PATIL,
Age : 47 years, Occ : Service
Assistant Teacher, Primary School
at Dongaon, Tq.Vaijapur,
run by Zilla Parishad,
Aurangabad, District Aurangabad.

...PETITIONER

-VERSUS-

1 ZILLA PARISHAD,
Aurangabad.
Through it's Chief Executive Officer.

2 The Director,
Maharashtra State Board of
Examinations, Pune.

...RESPONDENTS

....
Shri S.R.Barlinge and Shri Kalyan V. Patil, Advocates for the Petitioner.
Shri D.R.Kale Patil, Advocate for Respondent No1.
Shri A.R.Nikam, Advocate for Respondent No.2.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd September, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is aggrieved by the order dated 16.10.2003 passed by the Chief Executive Officer, Zilla Parishad, Aurangabad (Respondent No.1 herein).

3 The grievance of the Petitioner is that he has been terminated without compliance of the principles of natural justice. He is duly qualified to occupy the post of Assistant Teacher with SSC, D.Ed. qualification. The Selection Committee selected him for the said post on 16.06.1995 and he joined as an Assistant Teacher at Primary School, Dongaon on 22.06.1995.

4 Shri Barlinge, learned Advocate appearing on behalf of the Petitioner, submits that the Petitioner has passed his SSC examination in October, 1988 and has passed D.Ed. examination in November, 1992. After his appointment, he was working sincerely.

5 By letter dated 17.04.2001, Respondent No.2 informed Respondent No.1 that it was noticed that the certificate of passing the D.Ed. examination submitted by the Petitioner was not issued by the office of Respondent No.2. Based on the said letter dated 17.04.2001, Respondent No.1 initiated the departmental enquiry by issuing a show cause notice dated 16.05.2001 to the Petitioner. He was placed under

suspension by the letter dated 15.05.2001.

6 A criminal proceeding was also initiated against the Petitioner by virtue of the First Information Report lodged by one Shri Uttam Haribhau Pankade, who was working as Block Education Officer, Panchayat Samiti, Vaijapur. After conclusion of the enquiry and during the pendency of the criminal proceeding, the Petitioner was terminated by way of punishment by Respondent No.1 vide order dated 16.10.2003.

7 Shri Barlinge, therefore, submits that the core issue is as to whether, the certificate of passing of D.Ed. examination is bogus or not and the said aspect was yet to be decided by the competent criminal court, when he was terminated. He submits that subsequently the Petitioner has been exonerated by the Criminal Court vide judgment dated 30.03.2012 delivered in Regular Criminal Case No.196/2001. He, therefore, submits that once the Criminal Court has concluded in favour of the Petitioner, the grievance of the Respondents does not survive. He has relied upon the judgment of the Apex Court in the matter of *G.M.Tank v/s State of Gujarat*, **AIR 2006 SC 2129**.

8 Shri Barlinge further submits that the Petitioner has filed an additional affidavit dated 21.01.2015 reiterating that his D.Ed. certificate

is genuine and his acquittal in the criminal case is, therefore, a vital aspect to be taken into account in the light of the judgment in G.M.Tank's case (supra).

9 Shri Nikam, learned Advocate appearing for Respondent No.2/ Director, Maharashtra State Board of Examinations, Pune, has specifically contended that neither was the Petitioner admitted to any particular college, nor was his proposal as an Examinee for appearing for D.Ed. examination reached Respondent No.2 Department. Respondent No.2 does not have any record pertaining to the candidature of the Petitioner.

10 He, therefore, submits that going strictly by the records available with Respondent No.2 Department, the Petitioner can be said to have never appeared for D.Ed. examination and there was no record of his passing the said examination. Similarly, no mark-sheet/ mark-memo/ result sheet was issued by Respondent No.2 Department to the Petitioner.

11 Shri Nikam, therefore, indicates from the affidavit in reply filed on record dated 24.07.2015 that the college code, examination record of the year 1992 and the seat number mentioned by the Petitioner, does not tally and the name of the Petitioner is not found in it's records.

He clarifies that this is not an adversarial litigation. Respondent No.2 has no animosity towards the Petitioner and the said Department is purely taking a stand on the basis of its records.

12 Considering the controversy as above, I had specifically directed the Petitioner and Respondent No.2 to file their affidavits since the factual matrix in this case was that the Petitioner claimed to have passed the D.Ed. examination and Respondent No.2 which is the State Council for conducting the said examination, had no record of his appearance for the said examination.

13 While directing the said parties to file an affidavit, I had recorded in my order dated 06.07.2015 as follows:-

“1. *This petition is yet to be admitted. By an order dated 05/01/2015, this Court had passed the following order :*

“1. Mr.Barlinge, learned Advocate for the petitioner submits that this being a service matter, the honourable acquittal of the petitioner from a criminal case subsequent to the institution of this petition, needs to be brought on record since it has a direct impact on the outcome of this writ petition.

2. Learned Advocate for the respondents prays that an opportunity to file an affidavit in reply to the subsequent events placed on record, be granted to the respondents.

3. In the light of the above, liberty to the petitioner to place subsequent events on record through an affidavit and documents within two

weeks, is granted. Copy be served on the learned Advocate for the respondents, who shall have the liberty to file an additional affidavit in reply within 2 (two) weeks thereafter.

4. Stand over to 16/02/2015.”

- 2. Pursuant to the said order, the petitioner has preferred an additional affidavit dated 21/01/2015. The judgment of the J.M.F.C., Court No.3 dated 30/03/2012 delivered in Reg.Cri.Case No.196/2001 is also placed on record to indicate that the petitioner has been acquitted of having committed offences u/s 420, 468 and 471 of the Indian Penal Code.*
- 3. Mr.Barlinge has placed reliance upon the judgment of the Apex Court in the case of G.M.Tank Vs. the State of Gujarath and another, AIR 2006 SC 2129 (1) to support his contention that acquittal on the set of facts, which are identical to those in the departmental enquiry should lead to the exoneration of the delinquent in the departmental proceedings.*
- 4. The petitioner contends of having got admitted to a D.Ed. College, had attended classes, was issued with a hall ticket / admit card to appear for the D.Ed, examination in November 1992, has passed the said examination, received the marks memo and consequentially the D.Ed. certificate was issued by the competent authority.*
- 5. Per contra, respondent No.2 authority indicates from its communication dated 17/04/2001 addressed to the Education Officer (Primary), Zilla Parishad, Aurangabad that the examination Centre No.7101, College No.2105, Seat No.204229, as claimed by the petitioner, does not reveal that it is the same petitioner who had appeared for the said D.Ed. examination. His marks memo and D.Ed. certificate were not issued by respondent No.2 / Authority and the same are fabricated documents.*
- 6. It is not in dispute that this letter dated 17/04/2001 was the basis of the departmental proceedings and the criminal proceedings initiated against the petitioner. Mr.Nikam vehemently contends on behalf of respondent No.2 Director, Maharashtra State Board*

of Examinations, Pune that the petitioner had never appeared for the examination for passing the D.Ed. course and the purported marks memo and the certificate at issue, were never issued in favour of the petitioner.

7. *From the criminal proceedings and its judgment placed on record, ex-facie I am of the view that the criminal proceedings were restricted to Sections 420, 468 and 471 of the IPC. The departmental proceedings were initiated to establish that the petitioner had never appeared for the D.Ed, examination and as such there was no scope to issue his marks memo and the D.Ed. certificate. This aspect is proved in the domestic enquiry, which according to Mr.Barlinge suffers from non-adherence to the principles of natural justice and the findings of the Enquiry Officer, are perverse as they are not based on the evidence adduced in the enquiry.*
8. *It is trite law that criminal proceedings and departmental / domestic enquiry operate in different fields. Principally, the quality of evidence in between these two proceedings is conceptually distinct and different. Acquittal from the criminal proceedings, per se, may not mandate exoneration in domestic enquiries.*
9. *In the light of the above, I am inclined to direct the petitioner to to file his affidavit and submit all details with documents to indicate his admission in Umardari D.Ed. College, Mukhed, Tal.Mukhed, Dist.Nanded inclusive of his hall ticket/admit card and all such documents to indicate that he had attended classes in the said college after taking a valid admission for the D.Ed. course.*
10. *I am also directing respondent No.2 to file an affidavit categorically to state whether the petitioner was admitted to the said College, whether he had appeared for the examination and the documents establishing that the petitioner had never appeared for the said examination.*
11. *Respondent No.1 shall place the report of the Enquiry Officer on record.*
12. *The petitioner and respondent No.2 shall file their*

affidavits on or before 24/07/2015. No extension of time shall be sought by the parties since the petition is pending admission for the last 11 years.

13. *Stand over to 28/07/2015 for further consideration. Parties to note that this matter is likely to be heard finally at admission stage.”*

14 Pursuant to the above direction, Respondent No.2 promptly filed its affidavit in reply. It took a stand and that too very assertively that the Petitioner had never appeared for the D.Ed. examination. By my order dated 28.07.2015, I once again directed the Petitioner to file an affidavit with such documents as he may deem fit and which would evidence that the Petitioner had appeared for the said examination.

15 After affording several opportunities, the Petitioner has finally filed an affidavit dated 26.08.2015. It is contended that he had taken admission in the D.Ed. College, Umardari, Taluka Mukhed, District Nanded. By the Transfer Certificate dated 01.02.1993 it is certified that the Petitioner has completed two years of D.Ed. training and has passed the D.Ed. examination in November, 1992 with seat number 204229. An Admit Card is placed on record.

16 Shri Nikam, upon going through the said affidavit of the Petitioner, submits that the seat number 204229 (which is erroneously typed as 204327 in paragraph 2 of the affidavit in reply of Respondent

No.2 dated 24.07.2015) does not tally and the information supplied by the Petitioner is incorrect. He further submits that the name of the Petitioner is not found in the register of the examination held in the year 1992. Though the college code 2105 and centre number 7105 matches, but the Petitioner does not appear to be one of the Examinee/ candidate. He reiterates that the passing certificate and marks memo have also not been issued by Respondent No.2 to the Petitioner.

17 I have gone through the judgment of the Criminal Court dated 30.03.2012. The issue that was before the Criminal Court was as to whether, the Petitioner had committed a fraud as against the State. It was alleged that the Petitioner had prepared a false marks-memo. On the basis of evidence, the Criminal Court concluded that neither the Petitioner has manufactured his marks-memo, nor has he played any fraud against the State. The issue before the said Court was not as regards, whether, the Petitioner has passed the D.Ed. examination or not. The said Court, therefore, concluded that the prosecution has not brought on record such evidence which would prove the alleged charge/ offence against the Petitioner.

18 In this backdrop, the judgment of the Apex Court in the case of G.M.Tank (supra) would not be applicable as the charge levelled upon

the Petitioner in the domestic enquiry was regarding his failure to appear for D.Ed. examination and the certificate and the marks-memo being false and the offence against him before the Criminal Court was altogether different.

19 I have seen the copy of the Admit Card placed on record by the Petitioner. It neither carries any seal of Respondent No.2 or the College, nor does it carry the signature of any authorized person who could be said to have issued the said Admit Card.

20 Considering the above, I do not find that the impugned order dated 16.10.2003 could be said to be perverse or erroneous. Respondent No.2 does not have any record about the appearance of the Petitioner for the D.Ed. examination in 1992. The seat number mentioned by the Petitioner is also not substantiated. In the light of these facts, I do not find any reason to interfere with the impugned order dated 16.10.2003.

21 As such, this Writ Petition being devoid of merit, is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)