

WRIT PETITION NO. 3880 OF 2014

VERSUS

Advocate for Petitioner : Mr.Jadhavar Santosh S.
AGP for Respondents 1 & 4 : Mr.P.M. More.
Advocate for Respondent 2 & 3 : Mr.V.D. Sapkal.

Dated: MARCH 26, 2015.

Heard learned Counsel for the parties. This petition has been filed with following prayers:

“B) By issuing writ of *mandamus* or any other appropriate writ, order or direction in the nature of Writ, respondent Nos.2 to 4 may kindly be directed to prepare and process pension case / proposal of the petitioner forthwith and grant petitioner all pensionary benefits as per the Rules on attaining age of superannuation;

B-1) By issuing writ of *certiorari* or any other appropriate writ, the notice / order dated

06.02.2014 issued by respondent No.2, may kindly be quashed and set aside;”

2 The learned Counsel for the petitioner submits that the order passed by the respondent No.2 – Secretary of the respondent management is without hearing the petitioner. He further submits that the petitioner stood retired on 31st May, 2013. There is no provision under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 to hold an inquiry after retirement. Relying upon the judgment of the Supreme Court in the case of ***State of Jharkhand & Ors vs Jitendra Kumar Srivastava & Anr [Civil Appeal No.6770 of 2013]*** dated 14th August, 2013, he further submits that the pension or gratuity cannot be withheld even if the departmental inquiry is pending. He invited our attention to the paragraphs 13 and 14 of the said judgment and submits that the petition deserves to be allowed.

3 On the other hand, learned Counsel for the

respondents No.2 & 3 submits that the petitioner did not recover the fees from the students and, therefore, the management initiated inquiry and accordingly, to that effect, order of recovery of Rs.3,46,890/- has been passed. He further invited our attention to the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 and in particular, Rules 27 and 29 of the said Rules and submits that Rule 29 enables the management to impose minor penalties without conducting an elaborate inquiry. He submits that the judgment of the Supreme Court in case of ***State of Jharkhand & Ors vs Jitendra Kumar Srivastava*** (supra) on which heavy reliance is placed by the petitioner, has been passed without referring to the Maharashtra Civil Services (Pension) Rules, 1982 and in particular, Rules 27, 29 and 32 thereof.

4 We have given careful consideration to the submissions of the learned Counsel for the petitioner and the learned Counsel for respondents No.2 and 3

and the learned AGP appearing for the State. So far prayer clause (B-1) of the petition is concerned, the same deserves to be allowed on the only ground that the petitioner was not heard during inquiry.

5 In that view of the matter, petition is allowed in terms of prayer clause (B-1). However, the respondent No.2 management will be entitled to conduct an inquiry after giving an opportunity of hearing to the petitioner. Such inquiry should be completed within four weeks from today. We also direct the respondents to process the pension papers of the petitioner as per the procedure forthwith. The petition stands disposed of, accordingly.

(P.R. BORA,, J)

(S.S. SHINDE, J)