

kps

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

WRIT PETITION NO. 8801 OF 2015

SEEMA KHANDU TEKALE,
Age : 32 years, Occ : Service,
R/o Dhangar Jawalaka, Tq.Patoda,
Dist.Beed.

...PETITIONER

-VERSUS-

- 1 THE STATE OF MAHARASHTRA,
through Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
- 2 The Additional Commissioner,
Aurangabad Division,
Aurangabad, Dist.Aurangabad.
- 3 The Chief Executive Officer,
Zilla Parishad, Beed,
Dist.Beed.
- 4 The Education Officer (Secondary),
Zilla Parishad, Beed,
Dist.Beed.

...RESPONDENTS

....

Advocate for Petitioners : Shri R.S.Deshmukh h/f Shri Bhosale Mahesh S..
Government Pleader for Respondent Nos.1, 2 and 4 : Shri D.R.Kale Patil.
Advocate for Respondent No.3 : Shri Suryawanshi P D.

...

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 challenges the order dated 03.08.2015
delivered by Respondent No.2, thereby rejecting the appeal of the
Petitioner.

3 Though a host of factors have been canvassed by both the
sides, it appears that the entire thrust of the Petitioner was on the aspect
of a major penalty having been imposed upon the Petitioner in the form of
reversion and hence, the Appeal under Rule 13 of the Maharashtra Zilla
Parishad District Services (Discipline & Appeal) Rules, 1964 (for short,
hereinafter referred to as “the 1964 Rules”), was filed.

4 Shri Deshmukh, learned Advocate appearing for the Petitioner
points out from the appeal memo that the same was filed under Rule 13 of
the 1964 Rules. He hastens to clarify that the Petitioner had first
approached the Division Bench of this Court in Writ Petition
No.6471/2015. By the order dated 29.06.2015, this Court granted liberty
to the Petitioner to avail of the alternate remedy under Rule 14 of the

1964 Rules. He submits that despite the said liberty, the Petitioner preferred an appeal under Rule 13 since she firmly believes that the reversion was in the form of a punishment.

5 Shri Deshmukh further points out from paragraph 19 and grounds II, III, IV and V of the memo of appeal that the Petitioner had put forth a case of imposition of punishment. He further indicates from the written notes of arguments submitted by the Petitioner before Respondent No.2/ Authority to support his contentions that while imposing the punishment under Rule 6 of the 1964 Rules, the procedure required to be followed was not so followed by the Respondent/ Authority. He, therefore, adds that the impugned judgment is in relation to the several appeals preferred by several similarly situated employees under Rule 14 and despite the appeal of the Petitioner being under Rule 13, the grounds raised by the Petitioner were not considered.

6 Shri Deshmukh further points out from paragraphs 19 and 20 of the memo of the petition to fortify his contention that the Petitioner has raised a ground herein that the order of reversion is in the form of imposing a major penalty under Rule 6 and as such, the challenge raised by the Petitioner has not been specifically dealt with by the Respondent/ Authority. He further adds that the Respondent/ Authority should have

dealt with each appeal separately looking to the grounds raised by the individual appellants.

7 In the alternative, Shri Deshmukh submits on instructions that considering the fact that the Petitioner was given an adhoc promotion as an Extension Officer from which position she has been reverted, the same would not amount to an order of imposition of punishment. Therefore, the Petitioner would not pursue the challenge put forth in the Appeal to the extent of the grounds raised in relation to Rule 6 and Rule 13 of the 1964 Rules. He submits that liberty be granted to enable the Petitioner to raise a challenge under Rule 14 of the 1964 Rules.

8 Shri Suryawanshi, learned Advocate appearing for Respondent No.3, does not dispute the fact that the appeal was filed under Rule 13 and the grounds under Rules 6 and 13 were raised. He also does not dispute that the written notes of arguments submitted by the Petitioner in support of her appeal were in relation to Rule 6, Rule 13, imposition of major penalty and violation of Article 311 of the Constitution of India.

9 Notwithstanding the above, Shri Suryawanshi submits that the appeal preferred by the Petitioner was presumed to be under Rule 14

as like all other appeals preferred by several other employees and hence, the same was decided as if it is an appeal under Rule 14. He, therefore, opposes the request put forth by Shri Deshmukh.

10 The learned Government Pleader has also supported the impugned judgment and prayed for the dismissal of the petition.

11 Having considered the submissions of the learned Advocates, it, therefore, needs to be scrutinized as to whether, any of the grounds raised by the Petitioner were considered by the appropriate authority. The impugned judgment delivered by the Additional Commissioner, Aurangabad is in relation to the Appeals preferred by several employees under Rule 14 of the 1964 Rules. Considering the grounds raised by the Petitioner and the written notes of arguments in support thereof, the Appeal preferred by the Petitioner was not under Rule 14, but under Rule 13. Rule 14 provides for an appeal against any order issued otherwise than by way of a penalty.

12 It is now submitted by the Petitioner that she would prefer to put forth an appeal under Rule 14 and raise grounds as may be available. It is also submitted that all the grounds under Rule 13 as were canvassed earlier stand given up by the Petitioner.

13 This appears to be a peculiar situation in peculiar set of facts. An appeal preferred under Rule 13 is dealt with as if it is under Rule 14 of the 1964 Rules. The competent authority could have dealt with the appeal preferred by the Petitioner on its own merits. The Petitioner's appeal bears number 123/2015. There is no reference to her appeal in the impugned order. The competent authority has referred to Appeal No.124/2015 specifically in the impugned order which appeal pertains to a person Mr.Mohan Devidas Gangane and not the Petitioner.

14 In such circumstances and without laying down a precedent, ends of justice would be met by permitting the Petitioner to prefer an appeal under Rule 14 and in the event, if such an appeal is preferred within 30 days from today, the competent authority/ Respondent No.2 herein shall decide the same under Rule 14 of the 1964 Rules on its own merits. This liberty is being granted taking into account the fact that the Petitioner has completely given up her challenge to the impugned order as regards Appeal No.123/2015. This order is being passed in the peculiar facts and circumstances of this case.

15 In the light of the above, this Writ Petition is disposed of by recording the statement of the Petitioner that she has given up her

challenge as regards Appeal No.123/2015 filed under Rule 13 of the 1964 Rules, with liberty to prefer an appeal under Rule 14 of the 1964 Rules. In the event, such an appeal is filed within 30 days from today, the competent authority/ Respondent No.2 herein shall decide the same on its own merits and without being influenced by any observations made by it in the impugned order.

16 Needless to state, the issue whether, the Petitioner would get any right to promotion merely because she was given an adhoc promotion, would also be dealt with by Respondent No.2.

17 With the above observations, the petition is disposed of and Rule is discharged.

(RAVINDRA V. GHUGE, J.)