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

WRIT PETITION NO. 8929 OF 2014

1 Unnati Mitra Mandal, Dhule.
Through it's President,
Unnatinagar, Nakanenagar,
Deopur, Dhule,
District Dhule.

2 Dattatraya Ramdas Pagare,
Headmaster,
Unnati Madhyamik Vidyalaya,
Nakanenagar, Deopur, Dhule,
District Dhule.

...PETITIONERS

-VERSUS-

1 The State of Maharashtra.
Through it's Secretary,
Education Department,
Mantralaya, Mumbai-32.

2 The Deputy Director of Education,
Nashik Region, Nashik.

3 Shri Promod Santosh Badane,
Age : 41 years, Occ : Service as
Assistant Teacher, R/o Plot No.4,
Vinodnagar, Near Netaji Ground,
Deopur, Dhule, District Dhule.

...RESPONDENTS

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Advocate for Petitioners : Shri Sapkal V.D.

AGP for Respondent Nos.1 and 2 : Shri S.N.Kendre.

Advocate for Respondent No.3 : Shri A D Pawar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th November, 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 21.07.2014 passed by Respondent No.2/ Deputy Director of Education, Nashik Region, Nashik, by which the order of punishment dated 18.02.2014 passed by the Petitioners-Management, withholding one annual increment of Respondent No.3/ Employee, has been interfered into.

3 Shri Sapkal, learned Advocate for the Petitioners/ Management, indicates from the impugned order that Respondent No.2 has concluded that the punishment of stoppage of one annual increment cannot be imposed unless an enquiry committee is formed and a full fledged departmental enquiry is conducted as provided under Rules 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short “the MEPS Rules, 1981”).

3 His contention is that stoppage of annual increment amounts to a minor penalty under Rule 31(iv) of the MEPS Rules, 1981 and for which compliance of Rules 36 and 37 is not mandated by the MEPS Rules, 1981.

4 He further submits that the impugned order primarily rests on the conclusion of Respondent No.2 that since Rules 36 and 37 are not complied with, no order imposing punishment on the employee could be sustained. His further grievance is that when the Petitioner had set out a contention in it's Written Statement that sufficient opportunity of hearing is not being given, Respondent No.2 has imposed a penalty of stoppage of one annual increment against the Headmaster. Shri Sapkal, therefore, submits that the impugned order is perverse and erroneous and is required to be quashed and set aside.

5 Shri Pawar, learned Advocate appearing on behalf of Respondent No.3/ Employee, supports the impugned order. He submits that no perversity can be pointed out by the Petitioner and as such, the impugned order calls for no interference.

6 The learned AGP appearing on behalf of Respondent Nos.1 and 2 has also supported the impugned order.

7 I have considered the submissions of the learned Advocates as have been recorded herein above.

8 It is not in dispute that the Petitioners/ Management had

issued the notice dated 23.01.2014 under the signature of the Headmaster thereby, calling upon Respondent No.3 to explain as to why he should not be punished for misdemeanors set out in the said notice.

9 It is also not in dispute that by the order of punishment dated 18.02.2014, after considering the reply of Respondent No.3 dated 29.01.2014 to the notice dated 23.01.2014, the Petitioner/ Management imposed the punishment of stoppage of one annual increment on Respondent No.3.

10 Respondent No.3 preferred an appeal before Respondent No.2. By the impugned order dated 21.07.2014, the appeal has been allowed and the order of punishment dated 18.02.2014 has been set aside on the ground that the Petitioner/ Management has not complied with Rules 36 and 37 of the MEPS Rules, 1981.

11 Rule 31 of the MEPS Rules, 1981 provides for classification of penalties and which reads as under:-

- “31. *Classification of penalties:- The penalties shall be classified into minor and major penalties as under:-*
- (1) *Minor penalties :*
- (i) *reprimand,*
 - (ii) *warning,*
 - (iii) *censure,*
 - (iv) *withholding of an increment for a period not*

exceeding one year,

(v) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Institution by negligence or breach of orders.

(2) major penalties:

(i) reduction in rank,

(ii) termination of service.”

12 Rule 32 prescribes the procedure for imposition of minor penalties and which reads as under:-

“32. Procedure for imposing minor penalties: The minor penalties may be imposed for lapses on the part of the employees such as delay in disposal of assignments, negligence of duty, insubordination, disobedience of orders of superiors and other misconduct or misbehaviour of similar nature. Before finally imposing any punishment as contemplated in this rule, the employee concerned shall be given in writing an opportunity to explain within two weeks why he should not for good and sufficient reasons, be punished for the lapses or omission on his part. The nature and quantum of punishment, if any to be imposed on him shall be decided after considering the explanation, if any given by the employee.”

13 It is undisputed that Rule 33 provides for a procedure for inflicting major penalties. The appointment of an enquiry committee under Rule 36 and the procedure to be followed for conducting an enquiry under Rule 37, would not apply and the said procedure is not required to be followed if a minor penalty is to be imposed under Rule 31. It is also not in dispute that Rule 31(iv) providing for withholding of increment for

a period not exceeding one year, is defined to be a minor penalty.

14 It is, therefore, apparent that Respondent No.2 has misdirected itself in concluding that the Enquiry Committee should have been appointed by the Petitioner under Rule 36 and the procedure prescribed under Rule 37 should have been complied with before imposing the punishment of stoppage of one increment by the order dated 18.02.2014.

15 Be that as it may, a litigating party, if makes a grievance as regards sufficient opportunity not being given, does not mean that the said litigant has expressed lack of faith or loss of trust against the judicial or quasi-judicial authority. The conclusion of Respondent No.2 in clause (D)(2) of the impugned order is, therefore, unsustainable inasmuch as, Respondent No.2 would not have an authority to impose such a punishment by passing such an order as has been passed under clause (D) (2) of the impugned order.

16 In the light of the above, the Writ Petition is partly allowed. The impugned order dated 21.07.2014 passed by Respondent No.2 is quashed and set aside.

17 Since the contention of Respondent No.3 which is by way of his grievance against the order dated 18.02.2014, has not been considered by Respondent No.2 while deciding the appeal, I am remitting the said appeal back to Respondent No.2 for considering the same on its own merits and keeping in view Rules 31 and 32 of the MEPS Rules, 1981.

18 The litigating sides shall appear before Respondent No.2 on 18th December, 2015 at 11:00 am. Formal notices need not be issued by Respondent No.2 to the litigating sides.

19 In addition to the appeal and the written statement of the Petitioners, the litigating sides are at liberty to file their written notes of submissions for the assistance of Respondent No.2 besides the liberty to address the mind of Respondent No.2 orally.

20 Needless to state, Respondent No.2 shall thereafter, decide the appeal filed by Respondent No.3 preferably on or before 31st March, 2016.

21 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)