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

WRIT PETITION NO. 3401 OF 2012

- 1 Vidhyak Shikshan Samiti Pashte,
Through it's President,
Shri Shriram Vasantrao Patil,
Age : Major, Occ : Service,
Having office at Pashte,
Tq.Sindhkheda, Dist.Dhue.
 - 2 Sane Guruji Vidyalaya, Pashte,
Through it's Headmaster,
Shri Purushottam Eknath Kothavade,
Age : 57 years, Occ : Headmaster,
Having office at Pashte,
Tq.Sindhkheda, Dist.Dhule.
- ..PETITIONERS

-VERSUS-

- 1 The Deputy Director of Education,
Nashik Division, Nashik.
 - 2 Shri Ramkrushna Garbad Lohar,
Age : 53 years, Occ : Suspended,
R/o Pashte, Tq.Sindhkheda, Dist.Dhule.
- ..RESPONDENTS

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Mr.Patil Shrikant S., Advocate for Petitioners.
Mrs.S.D.Shelke, AGP for Respondent No.1.
Mrs.Kazi Sabahat T., Advocate for Respondent No.2.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 16th June, 2015

Oral Judgment:

- 1 Rule.

2 Rule made returnable forthwith and heard finally with the consent of the parties.

3 The Petitioners assail the order dated 06.09.2011 passed by the Deputy Director (Education) on the application made by Respondent No.2/ employee of the Petitioners /Educational Institution.

4 By the impugned order, the order of punishment passed by the Petitioners/ Employer against Respondent No.2/ Employee has been set aside on account of non compliance of Rules 30 and 32 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 ("MEPS Rules, 1981").

5 At the very outset, in the peculiar facts of this case, it is necessary to appreciate Rules 30 and 32 of the MEPS Rules, 1981 which read thus:-

"30. Imposition of penalty of withholding of increment. When an increment of an employee is withheld the authority imposing the punishment shall specifically mention in its order:-
(a) the period for which it is withheld, and
(b) whether the period for which the increment is withheld shall be exclusive of the leave (except casual leave) taken during the period.

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 of 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.”

6 Mr.Patil, learned Advocate for the Petitioners, has strenuously contended that the show cause notice dated 17.02.2006 was issued to the Employee calling upon him to explain why action should not be initiated against him.

7 Though the period for submitting the reply was not mentioned, it is revealed through the record that this notice was one of the subject matters of the order of punishment issued by the Employer on 03.07.2010, which is practically after four years and five months from issuance of this notice.

8 The Petitioners point out another notice dated 18.02.2008 mentioning certain instances of misdeeds against the Employee thereby,

giving him only three days' time to reply.

9 The Employee has submitted his reply dated 20.02.2008 to the notice dated 18.02.2008 denying the charges levelled upon him. However, in an unprecedented manner while signing below his reply, the Employee has drawn a picture of a hammer as his signature by writing his surname attached to the handle of the hammer.

10 Yet another notice dated 29.02.2008 is said to have been issued to the Employee. However, I do not find it to be a notice since it indicates that the Employee would be punished if he commits any misconduct in future.

11 In a communication dated 07.04.2010 by the President of the Educational Institution to the Headmaster of the School, it is mentioned that the Employee is continuously committing misconducts and the Headmaster was, therefore, directed to call for an explanation from the Employee within three days. It was also mentioned that the Employee should be precluded from signing on the attendance register.

12 Mr.Patil, learned Advocate, was unable to explain as to why such a direction was issued by the President of Institution by which the

Employee was to be prevented from signing the attendance register notwithstanding the fact that he may report for duties.

13 Mr.Patil has then turned to the communication dated 03.07.2010 by the President of Institution addressed to the Headmaster of the School directing him to stop the annual increment of the Employee for one year on the basis of confidential report Part-II. It is discussed in the said communication that the confidential report indicates that the Employee has been committing misdeeds. Reference is made to the notices dated 17.02.2006 and 18.02.2008. It is the contention of Mr.Patil that this communication dated 03.07.2010 is the order of punishment issued to the Employee and the communication dated 08.07.2010 by the Headmaster to the Employee is to convey the order of punishment.

14 The Petitioners have vehemently contended that Rules 30 and 32 have been scrupulously complied with by the Petitioners. It is further submitted that the impugned order dated 06.09.2011 is perverse and unsustainable as the Deputy Director of Education has failed to consider that the Petitioners have complied with Rules 30 and 32.

15 Mrs.Kazi, learned Advocate for Respondent No.2/ Employee, has placed reliance upon Rules 30 and 32 of the MEPS Rules, 1981 and

has contended that the Petitioners have failed to comply with the said Rules. It is further submitted that notice dated 17.02.2006 cannot be a subject matter of punishment which is awarded on 08.07.2010. Passage of four years and five months has led to a presumption that the Employer has given up it's right to initiate any action on the said notice. Similar is her argument in relation to the notice dated 18.02.2008, which has been adequately replied to by the Employee.

16 Mrs.Kazi, however, expresses regrets for the act of the Employee in drawing a picture of a hammer as a part of his signature while replying to the show cause notice. She submits that it would be conveyed to the Employee that henceforth he shall not resort to such signatures.

17 Mrs.Kazi hastens to add that the Management has subsequently served a charge sheet on the Employee and conducted a departmental enquiry and has dismissed the Employee from service. But, the said order of dismissal from service is sub-judice before the competent forum.

18 I have considered the submissions of the learned Advocates for the respective sides and have gone through the petition paper book

with their assistance.

19 At the outset, I conclude that the notice dated 17.02.2006 cannot be raked up after a passage of four years and five months to initiate action against the Employee. There are no circumstances expressed or cited by the Petitioners which precluded them from passing any order of punishment pursuant to the notice dated 17.02.2006 with promptitude.

20 In relation to the notice dated 18.02.2008, the Employee has replied on 20.02.2008. It was expected that the final order should have been passed within a reasonable time. Passage of two years and five months cannot be construed to be a reasonable time as compelling circumstances have not been cited.

21 Notwithstanding the above, the order of punishment dated 03.08.2010 as cited by the Petitioners, in my view, would not amount to an order as is understood under Rule 32 of the MEPS Rules, 1981. Rule 32 clearly indicates that minor penalties can be imposed on the Employee after the concerned Employee is given an opportunity to explain within two weeks as to why he should not be punished for the lapses. The nature and quantum of punishment to be imposed is to be decided by the

competent authority after considering the explanation submitted by the Employee. Rule 32 mandates of giving sufficient reasons while awarding such punishment.

22 The communication dated 03.07.2010, which the Petitioners cite as being the final order of punishment, is based on the confidential report Part-II. There is no explanation forthcoming as to whether, the confidential report part-II concerning the Employee was ever made available to him. So also, the import and meaning of Rule 32 cannot permit the Employer to rely upon the confidential report and pass an order of punishment.

23 Similarly, though it has been strenuously canvassed by Mr.Patil that the order dated 03.07.2010 is in complete compliance of Rule 32, I am unable to accept his contention for the reason that there appears no sound and sufficient reasons while rejecting the explanation of the Employee while arriving at the quantum of punishment to be awarded to the Employee.

24 In the fact situation recorded above, I do not find that the impugned order passed by the Deputy Director of Education allowing the Appeal of the Employee and setting aside the punishment awarded by the

Employer, could be termed as being perverse or unsustainable.

25 In the light of the above, this Writ Petition sans merit and is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)