

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10041 OF 2015

SHOBHA RAMESHCHANDRA KULKARNI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri V.D.Sapkal
AGP for Respondents 1 to 3 : Shri Lokhande K.N.
Advocate for Respondent 4 : Shri S.T.Shelke
Advocate for Respondent 5 : Shri R.N.Dhorde, Sr. Adv.
i/b Shri V.R.Dhorde

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 16, 2015

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PER COURT :-

1. The petitioner is aggrieved by the order dated 31.5.2014, issued by respondent No.4 by which the respondent No.5 / management is directed to initiate action under Rule 29 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for short) and award punishment to the petitioner. Consequentially, the petitioner is aggrieved by the order dated 19.9.2014, by which respondent No.4 - Education Officer (Primary) has also directed the Pay and Accounts Department, Zilla Parishad to recover Rs.39,000/- from the salary of the petitioner.

2. The petitioner submits that consequent to the above, by order dated 7.1.2015, the Deputy Director of Education - respondent No.2 has held that pursuant to the action initiated by respondent No.4 against the petitioner, the appeal preferred by the petitioner is not maintainable as there is no

provision to file an appeal against the order of respondent No.4 dated 19.9.2014.

3. Shri Sapkal, learned Advocate, therefore, submits that the petitioner has deposited the amount of Rs.39,000/- with the Pay and Accounts Department of Zilla Parishad under protest. He further states that the orders of respondent No.3, dated 30.5.2014 and of respondent No.4 dated 19.9.2014 are construed to be orders under Rule 29 of the said Rules and hence the appeal of the petitioner would be maintainable under the proviso to Rule 29 before the respondent No.2 authority.

4. He further states that the management has already initiated an enquiry for investigating into the charges levelled upon the petitioner as per the said Rules. His grievance, therefore, is that on the one hand, respondent Nos.3 and 4 claim to have passed the above referred order under Rule 29 and on the other hand, respondent No.2 has disposed off the appeal of the petitioner on the ground that no order under Rule 29 has been passed by the management so as to maintain the appeal before him.

5. Shri Dhorde, learned Sr. Advocate appearing on behalf of respondent No.5 / management submits that the rights of the management under the Rules to initiate disciplinary proceedings cannot be taken away, notwithstanding the orders passed by respondent Nos.3 and 4. Such disciplinary proceedings are under way. The petitioner has appointed her nominee on the enquiry committee as is provided under Rule 36. The said

enquiry would proceed in accordance with law.

6. Having considered the submissions of the learned Advocates as have been recorded above, I find that the orders dated 30.5.2014 and 19.9.2014 cannot be said to be orders passed by the employer. Rule 28(5) enables an employer to award punishment to a delinquent employer post disciplinary proceedings. These orders passed by respondents 3 and 4, can not, therefore, be said to be orders passed in pursuance to Rule 28.

7. The petitioner has deposited an amount of Rs.39,000/- in view of the above stated two orders. Ends of justice would be met by holding that the said amount has been deposited under protest and the deposit of the said amount shall neither mean that the petitioner has admitted her guilt nor would it prejudice her rights and especially her defence before the Enquiry Officer.

8. As such this petition is partly allowed. The impugned orders shall not be construed to be orders under Rule 29 of the said Rules. The amount deposited by the petitioner shall be without prejudice to her rights and defence in the enquiry and shall not amount to an admission of her guilt. The enquiry under way shall proceed in accordance with Rules 36 and 37 of the said Rules. Both the litigating sides shall cooperate with the enquiry committee to ensure that the same is conducted and completed within the time frame as is prescribed under the Rules.

9. Needless to state, the enquiry committee shall decide the subject matter of enquiry on its own merits and without being influenced by any observations made in the orders dated 31.5.2014 and 19.9.2014 as well as the observations made by respondent No.2 in its order dated 7.1.2014. Contentions of the management as well as the petitioner are kept open for adjudication by the enquiry committee.

(RAVINDRA V. GHUGE, J.)

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