

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1848 OF 2012

Shri. Dnyaneshwar Nivrutti Jadhav .. Petitioner
vs.
The State of Maharashtra & ors. .. Respondents

Mr. N.V. Bandiwadkar for the Petitioner.
Ms Aparna Vhatkar, AGP for Respondent Nos.1 to 3.
Mr. I. M. Khairdi for Respondent No.4.
Mr. R.S. Alange for Respondent No.5.

CORAM : M. S. SONAK, J.
DATE : 4 MARCH, 2015

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition is directed against the order dated 4 May 2010 made by the Deputy Director of Education, Pune Region, Pune refused to entertain the petitioner's appeal against the order dated 11 June 2008, by which minor penalty of the permanent denial of promotion came to be imposed upon the petitioner.

3] The impugned order states that since the permanent denial of promotion is not one of the minor penalties specified in clause (1) of Rule 31 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (said Rules), the appeal is not maintainable.

4] The reasoning of the Deputy Director of Education is unsustainable. The School Management, has stated that a minor penalty was being imposed upon the petitioner. In such circumstances, the appeal lay before the Deputy Director of Education under the proviso to Rule 29 of the said Rules.

5] In some what similar situation, a Division Bench of this Court in case of *Kewalram s/o. Tulshiram Kiranapure vs. Manoharbhai Shikshan Prasarak Mandal and ors.*¹, this Court observed thus:

8. The scheme of the 1977 Act & 1981 Rules therefore is provide a complete code in the matter of discipline & conduct. The management therefore can not travel beyond the procedure prescribed thereunder. The relevant portion of the Rules highlighted above demonstrates that any of the minor penalties can be inflicted upon the petitioner by respondent management. Language thereof is very specific & it employs singular number ie word used is “increment” and not “increments”. Use of prefix “an” or verb “is” in conjunction with it also emphasizes this fact only. Punishment of withholding only one increment is therefore envisaged by these Rules. Against such minor penalty, an appeal is provided before the Deputy Director. If it is major penalty, appeal is provided before the School Tribunal. Thus in disciplinary matters the 1977 Act & 1981 Rules contain a self sufficient & complete code. Hence, that “completeness” or nature can not be allowed to be defeated by permitting the management to impose some other adverse measure as punishment or to invent/use it as such. The punishment order dated 23/3/2009 in present matter is in excess of powers conferred upon the management by the law. By exercising powers not vested in it, the respondent management can not be permitted to defeat this statutory scheme. The employee

1 Writ Petition No.5607 of 2010 decided on 13 June 2011

like petitioner can not be left remedy-less or then asked to approach civil court. The respondent 4 Deputy Director has been given powers to interfere with any order of minor punishment as an appellate authority. It can not be accepted that merely because the management adopts some other measures not envisaged in 1981 Rules or devises punishment not prescribed, his those powers are taken away. Scheme above shows that law never restricted power of respondent 4 in any manner so as to confine it to entertaining an appeal only against "legal punishment" & denied it or expected him to loose that power in case of such punishment not contemplated by it. Refusal of said respondent to entertain the appeal is therefore unsustainable. Respondent 4 has to examine the appeal on merits as an appellate authority to find out whether there is any cause or conduct warranting the punishment & then its proportion or legality. Here said respondent has refused to exercise that jurisdiction. Advise by him to approach school tribunal is also contrary to law. As respondent 4 has refused to entertain appeal of petitioner, it is unnecessary for us to go into other challenges & the consideration on merit has to be left to him.

6] Applying the law laid down as aforesaid also, the impugned order shall have to be set aside.

7] The Deputy Director of Education is directed to consider the petitioner's appeal on merits and in accordance with law, as expeditiously as possible and in any case within a period of three months from today.

8] The contesting parties to appear before the concerned Deputy Director of Education on 23 March 2015 at 11.00 a.m. in order to obtain directions for the disposal of the appeal.

9] It is clarified that this Court has not gone into the merits of the matter and accordingly, all contentions of all parties are kept open for decision on merits by the Deputy Director of Education.

10] Rule is disposed of in aforesaid terms. There shall be no order as to costs.

11] All parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)

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