

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 190 OF 2015

Pratap S. Tambe	..	Petitioner
VS.		
The State of Maharashtra & Ors.	..	Respondents

Mr. M. L. Patil for Petitioner.
Mr. A. R. Metkari – AGP for Respondent Nos. 1 and 2.
Mr. Deepak Jadhav for Respondent No. 3.

CORAM : M. S. SONAK, J.
DATE: 11 MARCH 2015

P.C. :-

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

2] This petition is directed against the order communicated by the Deputy Director of Education, Mumbai on 18 November 2014 to the petitioner refusing to entertain the petitioner's appeal against order dated 1 March 2013, by which penalty of permanent denial of promotion and withholding of increments for a period of one year came to be imposed upon the petitioner. The impugned order states that since the penalty imposed is a major penalty, appeal is not maintainable under the proviso to Rule 29 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (said Rules).

3] Rule 29 of the said Rules, reads thus :

*“29. **Penalties** : Without prejudice to the provisions of these rules, any employee guilty of misconduct, moral turpitude, wilful and persistent neglect of duty and incompetence, as specified in rule 28, shall be liable for any of the following penalties, namely :*

- (1) warning, reprimand or censure.*
- (2) Withholding of an increment for a period not exceeding one year.*
- (3) recovery from pay or from some 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.*
- (4) reduction in rank.*
- (5) termination of service:*

Provided that, an employee of a private school aggrieved with decision of imposing a minor penalty as specified in clause (1) of rule 31 may prefer an appeal to the Deputy Director of the region concerned within 45 days from the date of receipt of the order of punishment.”

4] Rule 31 of the said Rules provides for classification of penalties and the same reads thus :

*“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.”

5] The penalty of permanent denial of promotion is not one of the major penalties classified in terms of sub rule (1) of Rule 31 of the said Rules. Similarly, the same also does not appear in the list of minor penalties referred to in sub rule (1) of Rule 31 of the said Rules.

6] However, the Division Bench of this Court in the case of *Kewalram Tulshiram Kiranapure vs. Manoharbai Shikshan Prasarak Mandal & Ors.*¹ has held that school management by imposing some penalty, which is neither classified as a minor penalty nor a major penalty cannot defeat the statutory scheme of the said Rules and leave the employee concerned either remedy-less or be required to approach the civil court. The relevant observations, are contained in paragraph 8, which read 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

1 2011(5) Bom. C.R. 516

specific & it employs singular number i.e. 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 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."

7] This Court, in the case of *Shri Dnyaneshwar Nivrutti Jadhav vs. The State of Maharashtra & Ors.*², by following the decision of

² Writ Petition No. 1848 of 2012 decided on 4.3.2015

the Division Bench in the case of *Kewalram* (supra) has held that penalty of permanent denial of promotion can be appealed against before the Deputy Director of Education by resort to the proviso to Rule 29 of the said Rules.

8] Accordingly, the impugned order will have to be set aside and is hereby set aside. The petitioner's appeal is restored before the Deputy Director of Education, Mumbai, who shall hear and decide the same on merits and in accordance with law within a period of four months from the date of receipt of this order.

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 by the Deputy Director of Education, Mumbai.

10] All parties to act on authenticated copy of this order.

(M. S. SONAK, J.)