

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5390/2015

Ku. Farhat Anjum Abdul Jabbar

...Versus...

The Muslim Minority Education and Cultural Development Society, Balapur, Tq.
Balapur and Distt. Akola through President and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.S. Patil, Advocate for petitioner
Shri R.D. Karode, Advocate for respondent no.1

CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATE : 05.10.2015

By this petition, the petitioner challenges the order of the respondent – Management dated 5.9.2015 suspending the petitioner pending enquiry.

The only ground raised by the petitioner for challenging the suspension is that the petitioner could not have been suspended without securing the prior permission of the Education Authority as required by the provisions of Rule 35 (1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

The petitioner cannot effectively challenge the suspension order on the sole ground raised on behalf of the petitioner. Admittedly, the respondent – Institution, where the

petitioner was working as a Headmaster, is a Minority Institution. The petitioner was appointed as a head of the Institution without following the regular procedure as prescribed by the MEPS Act and Rules. The petitioner was promoted on the post of head of the Institution by taking recourse to the provisions of Section 3 (2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The recruitment of the petitioner as the head of the Institution is not made by applying the provisions of the Act and the Rules. If the Rules and Regulations were not to apply to the recruitment of the petitioner in terms of Section 3 (2) of the Act of 1977, it is difficult to follow as to how the provisions of Rule 35 (1) of the Rules of 1981 could be applied while suspending the petitioner. Under the Uttar Pradesh Education Act and the Orissa Education Act it is necessary for the educational institution to secure the prior approval of the Director before terminating the services of the teacher. These provisions were considered by the Hon'ble Supreme Court in the judgments reported in (2001) 4 Supreme Court Cases 296 [Committee of Management, St. John Inter College...Versus...Girdhari Singh and others] and (1999) 3 Supreme Court Cases 676 [Yunus Ali Sha...Versus...Mohamed Abdul Kalam and others] to hold that the statutory requirement of prior approval of the Authorities to terminate the services of the employee would not be applicable while terminating the services of the employees in Minority Institutions. If the Rule of seeking prior approval of the Education Department before terminating the services of an employee was not to apply to a Minor Institution, it is difficult to follow how the petitioner could

challenge the suspension order solely on the ground that the suspension could not have been effected without the prior permission of the Education Department, as required by the provisions of Rule 35 (1) of the Rules of 1981.

In view of the aforesaid, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

Wadkar