

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

WRIT PETITION NO.6299 OF 2016

Bandu s/o Dhrupatrao Dhakne,
age: 42 years, Occ: service,
R/o House No.Sector 9-02-04,
Vitthal Nagar, N-2, CIDCO, Aurangabad.

.. PETITIONER

VERSUS

1 The State of Maharashtra,
through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.

2 The Dy. Director,
Aurangabad Division, Aurangabad.

3 The Education Officer (Secondary),
Zilla Parishad, Aurangabad.

4 Bhagwan Pratishthan,
through its Trustee -
Vinayak Wagh, age: major,
Occ:
R/o Sandeep, in front of
Labhkheta Karyalaya,
Garkheda Road, Vishal Nagar,
Aurangabad.

5 Bhagwan Pratishthan,
Shri Babanrao Dhakane Vidyalaya,
Chikhalthana, Aurangabad,
through its Head Master.

.. RESPONDENTS

Mr.Ramesh I. Wakade, advocate for the petitioner.
Mr.S.G.Karlekar, A.G.P. for Respondents No.1 to 3.
Mr.S.G.Rudrawar, advocate for Respondents No.4 & 5.

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**CORAM : R.M. BORDE &
K. K. SONAWANE, JJ.
DATE : 1st SEPTEMBER, 2016.**

ORAL JUDGMENT (Per R.M.Borde, J.) :

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of learned counsel for the respective parties.
3. Petitioner is an employee appointed by respondent no. 5 – institution and is serving as Laboratory Assistant. The employer has initiated departmental proceedings against the employee and has issued charge-sheet. Petitioner has forwarded name of one Mr. Ramakant Mule as his representative to represent him in the enquiry. Respondent-institution has however turned down the proposal made by petitioner naming Shri Ramakant Mule as representative on his behalf during conduct of enquiry. Respondent has turned down the proposal of petitioner by making reference to Rule 36(2)(a)(ii) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Petitioner contends that a retired employee cannot be said to be disqualified. Rule 36(2)(a) and (b) were under consideration of Full Bench in the matter of Shikshan Prasarak Mandal, Awasari(Bk) Vs. Ramesh Bhimrao Narayankar and others reported in **2016(2) Mh.L.J. 677**. The Full Bench dealing with the issue has observed that a teacher or headmaster on whom State/National Award is conferred and who is chosen as a third member of the Inquiry Committee under Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, can be a retired teacher or headmaster. The constitution of the inquiry committee in terms of Rule 36 provides for appointment of an awardee teacher. In making such appointment, the Chief Executive Officer

should and is rather expected to persue the panel of awardee teacher. Before choosing and appointing, the Chief Executive Officer should ascertain and in order to avoid any allegation of bias, prejudice or malafides that he does not choose and appoint an awardee teacher who has served or is serving the management holding inquiry, in any capacity. He should also verify the antecedents and if there are any criminal cases in which allegations of moral turpitude, then, he must avoid appointing him on the inquiry committee. This will not only ensure that the inquiry is fair, just and proper, but is not delayed unnecessarily by the delinquent employee questioning the process on the ground of antecedents of the awardee teacher.

4. Learned counsel for petitioner, replying on aforesaid observation of the Full Bench, contends that same principle shall also be made applicable in case of representative who is necessarily shall be a teacher. It is further contended by petitioner that after retirement the representative recommended by petitioner has secured employment and is infact an employee of educational institution. In view of employment of representative of petitioner in an educational institution after his retirement, he cannot be branded as a retired employee. He is employed on clock hour basis in higher secondary school during the years 2015-2016 and 2016-2017. Objection raised by respondents does not survive since the representative cannot be said to be a retired employee as he has secured employment after attaining age of super annuation. The order passed by respondent refusing permission to representative suggested by petitioner to participate in the

inquiry proceeding is erroneous and deserves to be quashed and set aside and the same is accordingly quashed and set aside. Impugned communications dated 28.05.2016 and 07.06.2016 issued by respondent no. 4 are quashed and set aside. Learned counsel for respondent-management states that the subsistence allowance payable to the employee shall be paid in accordance with the relevant rules. Rule is accordingly made absolute. No costs.

(K. K. SONAWANE)
JUDGE

(R. M. BORDE)
JUDGE

dyb