

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11723 OF 2016

Shaikh Mukthar Shaikh Ismail,
Age-51 years, Occu-Service,
At present - NIL,
R/o Badshaha Nagar, Korit Road,
Nandurbar, Tq. and Dist.Nandurbar

-- PETITIONER

VERSUS

1. Sardar Shikshan Sanstha,
Deopur, Dhule, Tq. and Dist. Dhule,
Through its President,
2. The Incharge Head Master,
Anglo Urdu High School,
Pimpalner, Tq.Sakri,
Dist. Dhule,
3. The Education Officer (Secondary),
Zilla Parishad, Dhule,
4. The Presiding Officer,
School Tribunal, Opp. S.S.C. Board,
Nashik, Tq. and Dist. Nashik

-- RESPONDENTS

Mr.Syed Masood Chand, Advocate for the petitioner.
Mr.Raj Devdhe h/f Mr.S.P.Brahme, Advocate for respondent Nos. 1 and 2.
Mr.N.T.Bhagat, AGP for respondent No.3.
Respondent No.4 is deleted.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 13/12/2016

ORAL JUDGMENT :

1. Respondent No.4 being the Presiding Officer of the School

Tribunal stands deleted from this proceeding.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. The petitioner / original appellant before the School Tribunal is aggrieved by the order dated 20/08/2016 by which his application for seeking production of the record and proceedings of the departmental enquiry in his Appeal No.52/2015 has been rejected.

4. I have considered the submissions of the learned Advocates for the respective sides.

5. In my view, in order to test the legality of an enquiry and the findings of the Enquiry Officer/Committee, it is always preferable and appropriate that the original R & P of the enquiry is produced before the Court dealing with the matter. The petitioner has produced the impugned order of dismissal and the findings of the Enquiry Committee before the Tribunal and some documents. By the application which led to the passing of the impugned order, he has prayed for a direction to the respondent/Management to produce the R & P. Same has been rejected on the ground that the petitioner has the custody of the copies of the various documents which are a part of the R & P and hence by following

Rule 39, the burden lies on the appellant to produce all those documents.

6. I have considered the import of Rule 39 which requires that the appellant should produce documents on which he is placing reliance. Though Mr. Brahme has strenuously defended the impugned order, I am unable to accept his submissions that Rule 39 needs to be interpreted to be a mandatory provision and not directory nature.

7. In my view, the original R & P, if placed before the Tribunal, would in fact satisfy the requirements of the Evidence Act and the Tribunal could then rely upon those documents without any hesitation since they are in original form.

8. In the light of the above, this petition is allowed. The impugned order dated 20/08/2016 is quashed and set aside. The respondent/Management shall produce the original R & P before the School Tribunal within a period of 4 (four) weeks from today. Needless to state, as the order of dismissal and the findings of the Enquiry Committee have already been placed on record, the respondent/Management may not file the said 2 documents.

9. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)