

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

WRIT PETITION NO.6048 OF 2015

Shri Ganpat Vishwanath Jadhav

..vs..

**Jijamata Education Society, Sindkhed Raja, Tahsil Sindkhed Raja, District Buldhana, thr
its Secretary Shri Aasaram Anandrao Mehetre and ors**

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

Court's or Judge's Order

Shri A.A. Naik, counsel for the petitioner.
Shri M.I. Dhattrak, counsel for R-1, 2, 5, & 6.

**CORAM : B.P. DHARMADHIKARI &
KUM. I.K. JAIN, JJ.**

DATED : JUNE 21, 2016.

Heard learned counsel for the respective
parties.

The petitioner, an Assistant Teacher in
employment of respondent Nos.1 and 2, has reached
age of superannuation on 30.9.2015. He has
approached this Court in present writ petition for
declaration that the action of his Management, in
commencing departmental enquiry against him vide
communications dated 8.10.2015 (Annexure-N) and
13.10.2015 (Annexure-O), is illegal. Other prayer is to
direct the Management to submit his pension case
papers to respondent No.3-The Deputy Director of
Education, Amravati Division, Amravati for its further

.....2/-

processing. This Court has, while issuing notice in the matter on 30.10.2015, granted *ad interim* relief in terms of prayer clause (F) and, therefore, further enquiry proceeding could not be conducted.

We have heard learned counsel Shri A.A. Naik for the petitioner, learned counsel Shri M.I. Dhattrak for respondent Nos.1, 2, 5, and 6 and learned Assistant Government Pleader for respondent Nos.3 and 4.

The facts show that on the eve of his retirement, the petitioner was sought to be suspended pending enquiry on 15.9.2015. He approached this Court in Writ Petition No.5388 of 2015 and as per order of this Court dated 23.9.2015, that suspension order came to be stayed. Thereafter, he has received communication dated 8.10.2015 informing him of decision of the Management to constitute a three member committee to conduct departmental enquiry against him as per Rule 36 of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, "***the MEPS Rules, 1981***"). The statement of allegations dated 13.10.2015, served upon him, is also questioned in this petition.

Only contention is, as the petitioner has

superannuated on 30.9.2015, in absence of specific provision in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, "***the MEPS Act, 1977***") or the MEPS Rules, 1981 the departmental enquiry cannot be instituted or conducted against him thereafter. Learned counsel Shri M.I. Dhattrak has opposed this submission.

Learned Assistant Government Pleader has submitted that the issue is essentially between the petitioner and Management.

The petitioner has placed reliance on the judgment of the Honourable Apex Court in the case of **Anant R. Kulkarni ..vs.. Y.P. Education Society and ors** reported at **AIR 2013 SC 2098**, which considers the provisions of the MEPS Act only. The Honourable Apex has specifically found that in absence of express provision in the MEPS Act, 1977 / MEPS Rules, 1981, the Division Bench of the High Court was in error in permitting the Management to conduct enquiry against superannuated employee. Absence of such a provision, and, therefore, non-permissibility of holding departmental enquiry, is also found by this Court in the case of **Shah Babu Education Society, Patur and another ...vs... Presiding Officer, School Tribunal**

Amravati and Aurangabad Divisions, Aurangabad and another, reported at 2006(6) Mh.L.J. 547. Both these judgments are recently followed in the case of Gramin Shikshan Prasarak Mandal and another ...vs... Laxman Shyamrao Parate and another, reported at 2015(5) Mh.L.J. 450.

Therefore, it is settled position that neither the MEPS Act, 1977 nor the MEPS Rules, 1981 contain any provision enabling respondent Nos.1 and 2 to proceed departmentally against the petitioner after his superannuation on 30.9.2015.

As such, impugned decision to constitute a three member committee dated 8.10.2015 and the act of serving statement of allegations dated 13.10.2015 on the petitioner is without jurisdiction. The said communications, including statement of allegations, are accordingly quashed and set aside. As the petitioner has already superannuated, respondent Nos.1 and 2 have got no powers to hold any departmental enquiry against him.

In this situation, respondent Nos.1 and 2 shall submit pension case papers of the petitioner to respondent No.3, within a period of four weeks from today. Office of respondent No.3, thereafter, process it,

in accordance with law, within a period of two months. If the assistance of the petitioner in the matter is required by his ex-employer, the petitioner shall extend necessary co-operation.

The writ petition is thus partly allowed and disposed of. No costs.

JUDGE

JUDGE

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