

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

WRIT PETITION NO. 8986 OF 2016

Avikshit Ganesh Tokte .. Petitioner
through his natural Guardian

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.P.S. Shendurnikar, Advocate for the petitioner.
Mr.S.W. Munde, A.G.P. for respondent/State.
Ms.S.P. Mahajan, Advocate for respondent No.2.
Mr.P.M. Shinde, Advocate for respondent No.3.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.
DATED : 03.10.2017**

P.C. :-

1. Mr. Shendurnikar, learned Counsel submits that the performance of the petitioner in S.S.C. 10th standard examination held in February/March, 2016 is cancelled and the petitioner is further debarred by the Board from appearing in S.S.C. examination up to July, 2018. Learned Counsel submits that the punishment imposed and enquiry undertaken by the respondent is without following principle of natural justice. The rules have been followed in breach. The petitioner at no material point of time was served with notice of enquiry. The Head Master of the school had also not issued any notice to the petitioner nor the Board had issued notice to the

petitioner. In-fact, as per the regulations the Board has to serve notice to the candidates. In the present case, admittedly, even as per Board's contention no notice has been served upon the petitioner. The same is in fragrant violation of the rules and regulations. The learned Counsel submits that the punishment imposed upon the petitioner deserves to be quashed and set aside. The respondents be directed to declare result of the petitioner of 10th standard examination held in February/March, 2016.

2. To substantiate his contention, the learned Counsel relies on the judgment of Division Bench of this Court in the case of **Bharat Ghanshyam Chhabada Vs. Maharashtra State Board of technical Education, Mumbai & Ors.**, reported in **2015 (4) Mh.L.J.611** and another judgment of Division Bench of this Court dated 19.07.2017 in W.P.No.4998 of 2016.

3. Ms.Mahajan, learned Counsel for respondent No.2-Board submits that it is practice to serve students through respective schools. Respondent No.3 was given list of students to whom notices are to be served for the enquiry. Same was sent by speed post. Acknowledgment to that effect is also on record. Other students who were sent notice in the same manner, have appeared before the

Committee, except the petitioner. The petitioner was in know of the enquiry against him.

4. Learned Counsel for respondent No.3 states that the school had not received any notice from the Board for serving it to the petitioner.

5. It is admitted fact that the Board i.e. respondent No.2 has never directly served any notice to the petitioner in respect of enquiry of misconduct/malpractice against the petitioner. Respondent No.3 also states that it had never received any notice from the Board, so as to serve it upon the petitioner. The only irresistible conclusion that can be drawn is that the petitioner at no material point of time was served with notice of enquiry against him. On account of transgression of principle of natural justice, the impugned order would not sustain and the same deserves to be quashed and set aside and is hereby quashed and set aside. Respondent No.2 Board shall give fresh opportunity to the petitioner and shall enquire afresh in respect of alleged misconduct. Learned Counsel for respondent No.2 states that the petitioner may appear in the office of respondent No.2 on 30th October, 2017. Respondent No.2 through its Committee shall conclude enquiry in respect of misconduct as alleged against the petitioner and take

decision positively on or before 30th November, 2017 and shall communicate the same to the petitioner immediately.

6. The writ petition is accordingly partly allowed.
No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]