

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

WRIT PETITION NO. 12315 OF 2015

Shenaz Begum Yusuf Khan .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri D. J. Choudhari, Advocate for the Petitioner.

Shri M. B. Bharaswadkar, A.G.P. for Respondent Nos. 1 and 2.

Shri D. K. Rajput, Advocate for the Respondent No. 3.

Shri A. M. Karad, Advocate for Respondent Nos. 4 to 6.

**CORAM : S. V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

DATE : 23RD MARCH, 2017.

PER COURT :

. Mr. Choudhari, the learned counsel for the petitioner submits that, the charges against the petitioner are stale. Charges are leveled after seven to eight years that too the charges are framed after retirement of the petitioner. The petitioner was suspended on 30th October, 2015 and the petitioner on attaining the age of superannuation on the next day i. e. on 31.10.2015 stood retired. The enquiry could not have been continued. Rule 29 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules (for short "M.E.P.S. Rules") lay down nature of penalties. The nature of the

penalties are such that major penalty could not have been inflicted after retirement of the petitioner and as far as minor penalties are concerned, the enquiry as sought to be conducted is not contemplated under the provisions of the M. E. P. S. Rules. The learned counsel refers to various charges framed against the petitioner and submits that none of the charges would tantamount to misconduct.

2. Mr. Karad, the learned counsel for respondent Nos. 4 to 6 submits that, suspension of the petitioner was preceded with the show cause notice. It was given earlier in point of time. Thereafter, the suspension order is passed and charge sheet is also issued to the petitioner. The enquiry even after retirement can proceed as per Rule 34(3) of the M. E. P. S. Rules. The learned counsel submits that, the enquiry committee was constituted. The nominee of the petitioner also was solicited.

3. We have considered the submissions canvassed by learned counsel for respective parties. Mr. Karad, the learned counsel for the respondent Nos. 4 to 6 accedes that after retirement the major penalty as contemplated under Rule 31(2) of the M. E. P. S. Rules could not be imposed. The learned counsel has further submitted that, minor penalty can certainly be imposed and charges are framed, which would entail penalty against the petitioner.

4. When the major penalty could not be inflicted upon the petitioner, there is no point in continuing with the enquiry as per the procedure laid down for inflicting major penalties. The petitioner states that, she is ready to run the risk if the procedure to impose minor penalty is followed. Rule 32 of the M. E. P. S. Rules lays down procedure for imposing minor penalty.

5. It is submitted by the petitioner that, if minor penalty is imposed the petitioner has got remedy to assail the same in appeal.

6. Considering aforesaid submissions of respective parties, we pass following order.

7. The enquiry initiated for inflicting major penalty shall not be continued further against the petitioner. The respondents may take up the procedure for imposing minor penalties as per Rule 32 of the M. E. P. S. Rules and in accordance with law. In case the respondents chooses to initiate procedure for imposing minor penalty, the same shall be done expeditiously. The procedure shall commence within four (04) weeks from today. The writ petition is disposed of. No costs.

[SANGITRAO S. PATIL, J.]

[S. V. GANGAPURWALA, J.]