

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

WRIT PETITION NO.4599 OF 2000

Kum. Shivnanda d/o Pundlik Dusariya

Age : 19 years, Occu : Student,

R/o. Pishor, Taluka : Kannad,

District : Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra

2. The Maharashtra State Board of Secondary
and Higher Secondary Education, Pune
Through its Divisional Secretary,
Divisional Board, Aurangabad

3. The Principal,
Mahatma Jyotiba Fule College, Pishor,
Taluka : Kannad, District : Aurangabad

.. Respondents

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Shri A.S. Barlota, Advocate, holding for
Shri S.K. Barlota, Advocate for petitioner

Shri S.J. Salgare, Assistant Government Pleader
for respondent / State

Shri V.R. Sonwalkar, Advocate for respondent no.2

Shri D.J. Patil, Advocate, holding for
Shri M.Y. Deshmukh, Advocate for respondent no.3

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CORAM : SUNIL P. DESHMUKH &
P. R. BORA, JJ.

Date : February 06, 2018

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Petitioner is before the court questioning propriety,

validity and correctness of order dated 19-10-2000 passed by respondent no.2, whereunder respondent no.2 purports to cancel performance of petitioner in February - 2000 HSC examination and to impose penalty at the rate of ten rupee per day for academic years from 1997 to 2000.

2. Background in present petition relevant for decision in the matter can be briefly referred to as, petitioner had completed 10th standard education from a school affiliated to Central Board of Secondary Education in 1997. Petitioner, thereafter, took admission to 11th standard science faculty at Bhimrao Ambedkar College, Kannad and had passed 11th standard examination of HSC board (Respondent no.2 herein).

3. However, petitioner being resident of Pishore and Kannad being at a distance of 40 kilometer and she being a woman, it had become difficult for her to undertake to and fro journey everyday of 80 kilometers and could not continue to prosecute science faculty education in 12th standard at Kannad in the next academic year. Whereas 12th standard arts faculty being available at the station of her residence, Pishore, she had studied arts faculty education of 12th standard at Pishore, as science faculty had not been available at Pishore. Accordingly, she had

been allowed to appear at 12th standard examination of respondent no.2 Board from arts faculty. She had also passed said examination. However, in the very next year, 12th standard science faculty class had become available at Pishore and she being desirous of prosecuting studies from science faculty, she had undertaken 12th standard science education at Pishore. She had appeared for 12th standard examination from science faculty in February-2000. Her performance in said examination had been assessed and declared to be successful and had been given certificate accordingly.

4. Learned Counsel for petitioner submits that, based on said certificate, she had undertaken further studies and had completed D.Ed. course and on the basis of the same, she has been employed as a teacher in Zilha Parishad School and has been working as such for last almost 18 years. Learned Counsel Shri Barlota contends that, under a hyper technical approach the impugned communication dated 19.10.2000 all of a sudden came to be issued. Learned Counsel submits that, perusal of the impugned order shows, it is an accepted position that, petitioner had undergone 11th standard science course at Kannad and had passed the same and further that, in 2000 she had passed 12th standard examination from science faculty. Since petitioner had

passed 10th standard examination from C.B.S.C., Delhi and that, she had already passed HSC examination from Arts faculty in 1999, he submits that, as a matter of fact, strictly speaking no adverse action having regard the performance of petitioner could have been taken and much less having regard to provisions under The Maharashtra Secondary & Higher Secondary Board Regulation 1977 (hereinafter referred to as the 'Regulation') reading thus :

"92. PERMISSION TO RE-APPEAR AT THE EXAMINATION

- (1)
- (2)
- (3)
- (4)

(5) A candidate who has passed the Higher Secondary Certificate Examination conducted by the Maharashtra State Board of Secondary and Higher Secondary Education or any other equivalent or Higher Examination of any Statutory Board or University in India, and desires to appear in one or more isolated subjects will be allowed to appear in the subject/subjects not offered by him at the Higher Secondary Certificate Examination or Higher Examination of any Statutory Board or University in India. However, if he offers the subjects in which practicals are prescribed, he will have to complete the practical course prescribed for those subjects for first year and second year in a recognised junior college and attached the necessary certificate from the head of the recognised junior college of his having completed a practical course in those subjects for the two years along with his application. Such a candidate will not be entitled to the award of any certificate but shall be given a certified statement of marks obtained in the isolated subject or subjects offered at the examination on payment of the fee prescribed under Regulation 94."

5. Learned Counsel for petitioner submits that, such undertaking of science faculty examination after passing HSC arts examination is permissible pursuant to sub clause-5 of

regulation-92. He submits that, as far as practicals are concerned, it is not a disputed position at all that petitioner had already undergone 11th standard science examination at Kannad. As such, that aspect also gets complied with. In the circumstances, the impugned communication is untenable, being capricious and not in accordance with the regulations sought to be invoked.

6. Learned counsel for respondents no.2 and 3 submits that, it had been highly improper for petitioner to prosecute and undertake science faculty studies at 12th standard at Pishore without submitting an eligibility certificate as had been required. He submits that, since there had been irregularity and deficient prosecution of studies of 12th Standard science, impugned order had been necessitated in accordance with the regulations and had been issued. He submits that, respondent no.2 has taken action as reflected under impugned communication in compliance of regulations and further clarifies that, respondent no.2 has no personal grudge against petitioner. However because of irregularities action had been mooted and undertaken.

7. Thus, position emerges that, there is no absolute prohibition under regulations to offer studies of subjects, which

had already not been undertaken having regard to sub clause-5 of regulation-92.

8. It is not the case of respondents that, petitioner had not passed 11th standard science examination. The impugned communication in fact on perusal reveals that, action cannot be said to be in tune with the regulation-92, sub clause 5, however same is sought to be taken for non-submission of eligibility as referred to therein. Further, affidavit-in-reply on behalf of respondent no.2 purports to refer to that, due procedure had been followed by issuing notice to petitioner yet it appears that pursuant to regulations of Board particularly regulation-80, it is the Board, which issues eligibility certificate and it appears that, while petitioner had been undergoing respective courses, such a certificate had not been insisted upon. While, petitioner resumed science faculty education with a break, it may not have been necessary and such a certificate had not been insisted upon. It was subsequently considered by the Board that, petitioner had not obtained eligibility certificate as required.

9. It is not the case of respondent no.2 had petitioner approached for eligibility certificate it would have been declined to her.

10. One may have to take into account that, while petitioner had been prosecuting studies of 12th standard, she was of very tender age and none of the education institutions, one at Kannad and the other at Pishore, nor even respondent no.2 had ever pointed out such a necessity of having eligibility certificate. In the circumstances, while petitioner appears to have proved credentials in either faculty, for such a technical lapse of not obtaining eligibility certificate, a serious action mooted under the impugned order would be disproportionate punishment affecting her ongoing career. Moreover, impugned order reflects upon that the deficiency alleged, if any, can be made good by levying penalty as referred to therein.

11. In the circumstances, we do not consider that, impugned order deserves to be sustained in this scenario. However, penalty levied under the impugned communication, the same may be recovered from her. Learned counsel for petitioner, on instructions, states that petitioner undertakes to deposit the amount, and urges to set at naught the action of cancellation of performance in February-2000 HSC examination. In the circumstances in the factual background of the case, impugned order, so far as cancellation of performance of February-2000 examination is concerned, is set aside.

12. As far as penalty as sought to be imposed is concerned, the same would be paid by petitioner. Petitioner undertakes to pay penalty and some more amount towards the cost of this petition to respondent no.2. As such petitioner to pay Rs.20,000/- within a period of six weeks from the date of receipt of writ of this order and same be appropriated towards purposes as aforesaid by respondent no.2.

13. Petition accordingly is allowed partly. Rule made absolute accordingly.

[P.R. BORA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE