

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****LETTERS PATENT APPEAL NO. 216 OF 2011**

IN

WRIT PETITION NO. 5106 OF 2009

WITH

CIVIL APPLICATION NO. 7267 OF 2011

Sandeep S/o Prakashrao Sabne,
 Age : 25 Years, Occ. Service,
 R/o. Balaji Galli, Mukhed,
 Tq. Mukhed, Dist. Nanded.

..APPELLANT

VERSUS

1. Vidhyavardini Bahudeshiya
 Shikshan Sanstha Kandhar,
 Police Colony, Behind Court,
 Kandhar, q. Kandhar,
 Dist. Nanded, Through its
 President.
2. The Secretary,
 Vidhyavardini Bhaudeshiya
 Shikshan Sanstha Kandhar,
 Police Colony, Behind Court,
 Kandhar, Tq. Kandhar,
 Dist. Nanded.
3. The Headmaster,
 Saint Namdeo Maharaj
 Madhyamik Vidhalaya,
 Pansewadi, Tq. Kandhar,
 Dist. Nanded.
4. The Education Officer
 (Secondary),
 Zilla Parishad, Nanded.

..RESPONDENTS

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*Advocate for the Appellant : Mr. V.R.Dhorde**Advocate for respondent Nos. 1 to 3 : Mr. V.D. Salunke**A.G.P. For respondent No.4 : Mr. P.N. Kutty*

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CORAM :T.V. NALWADE AND
SUNIL K. KOTWAL ,JJ.
DATE : 25th JANUARY, 2019

JUDGMENT(PER T.V. NALWADE, J] :-

1. The appeal is filed to challenge the Judgment and the order delivered by the of learned Single Judge in Writ Petition No. 5106 of 2009 dated 07.06.2011. Heard both the sides.

2. The submissions made and record show that the present respondent-institution is the employer of the petitioner Sandeep. Sandeep was appointed as Shikshan Sevak on probation period of three years by the respondent institution. On the ground that probationary period was not satisfactorily completed, the appellant came to be terminated. This order was challenged before the School Tribunal by the appellant. The School Tribunal set-aside the order of termination by observing that proper procedure was not followed and particularly there was no compliance of Rule 15 of Maharashtra Employees of Private Schools (Conditions of Service)Regulation Act, 1977 (for short MEPS) Rules, which involve the writing of annual confidential report, special report etc and also the communication of adverse remarks. The learned Single Judge has observed that there was no specific issue of non compliance of Rule 15 of M.E.PS Rule and there is possibility that due to absence of that issue, framing of the point, such record is not

produced by the employer. On that ground the learned Single Judge has set-aside the order of the School Tribunal and has directed to give opportunity to the employer to produce the relevant record.

3. In the present matter learned counsel for the respondent submitted that Letter Patent Appeal itself is not tenable as it needs to be presumed that the learned Single Judge has exercised the jurisdiction under Article 227 of the Constitution of India and not under Article 226 of the constitution of India. The learned single Judge exercised supervisory jurisdiction and only for giving opportunity to the employer the matter is remanded back by the learned Single Judge. The appellant is reinstated in service and it appears that till today he is in service as Shikshan Sevak. In view of this circumstances, this Court holds that without entering into other merits of the matter and tenability of the matter, direction can be given to the Tribunal to comply the direction given by the learned Single Judge of this Court and follow the procedure and then take decision in the matter. Till than the service of the present appellant can be protected. In the aforesaid terms, the petition is disposed of and the remand order made by the learned Single Judge is kept intact.

4. Civil Application is disposed of. The interim relief already granted is to continue till disposal of the matter by the School Tribunal. The

tribunal is not get influenced by the observations made by this Court or the learned Single Judge with regard to merits of the matter.

[SUNIL K. KOTWAL]

JUDGE

YSK/

[T.V. NALAWADE]

JUDGE