

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

Civil Application [MCA] No.87 of 2019
in
Writ Petition No.6897 of 2018 (D)

(Bharati Subhash Chaudhari vs. The State of Maharashtra & others)

with

Civil Application [MCA] No.88 of 2019
in
Writ Petition No.6896 of 2018 (D)

(Ku. Urmila Sukhdev Ingle vs. The State of Maharashtra & others)

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

Court's or Judge's Orders

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Shri R.D. Karode, Advocate for the Applicant/Petitioner.
 Mrs. Kalyani Deshpande, A.G.P. for Respondent No.1.
 Shri Mangesh Bute, Advocate for Respondent Nos.2 & 3.

CORAM: SUNIL B. SHUKRE & S.M. MODAK, JJ.

DATE : 12th FEBRUARY, 2019.

In all these matters, a common ground taken is that this Court while disposing of each of the writ petitions, in respect of which these applications are filed, did not consider the law applicable to the facts of the case and without really hearing the petitioners in all these matters, disposed of all the petitions only on the ground that remedy of appeal was available to each of the petitioners and, therefore, granting liberty to each of the petitioners to exhaust that remedy, disposed of the petitions.

However, according to the learned Counsel for the applicants, the fact remains that the law glaringly applicable to the facts of the present case, which was about vitiating of the order of punishment,

which was passed in each of these cases without following the due procedure of law and granting of adequate opportunity of hearing to these applicants.

On going through the reasons recorded by this Court in the order passed on 01/11/2018, a common order in all these petitions, we cannot but agree with the learned Counsel for the applicants on what he has submitted before us. The law is well settled and it is that no major penalty can be imposed without following the procedure prescribed under the rules. This law also would show that an adequate opportunity of hearing regarding the proposed major penalty is required to be given to the delinquent employee. If this procedure is not followed, it would strike against the fundamental right of the petitioners and also other rights, which have been made available to them under the rules applicable to them. This aspect of the matter, so important one, renders the issue of availability of remedy of appeal quite insignificant and since this was not considered by this Court earlier, we are of the view that the common order of disposal of all these matter need to be recalled and, accordingly, it is recalled.

All the petitions be restored to the original file forthwith and placed before this Court immediately for further consideration.

The applications are disposed of accordingly.

JUDGE

JUDGE