

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1321 OF 2018

Karmaveer Kakasaheb Wagh
Through its Secretary & Anr. ..Petitioners
V/s.
State of Maharashtra
Through its Secretary & Ors. ..Respondents

Mr.Sandip R. Waghmare for the Petitioners.

Ms.G.P. Sonawane, AAGP for Respondent Nos.1 and 2-State.

Mr.A.K. Patil for Respondent No.3.

CORAM : C.V. BHADANG, J.

DATE : 16th JANUARY 2020

P.C.

1. The challenge in this petition is to the order dated 31st March 2015 passed by the respondent No.2 Deputy Director of Education, Nashik Division, Nashik by which an order directing the stoppage of an annual increment of the respondent No.3, on the basis of an adverse confidential remark, has been set aside.

2. The brief facts are that the petitioner was working as a teacher in the petitioner No.2-school, run by the petitioner No.1 and was teaching Geography in the Junior College. The Principal of the

said college as a reporting authority wrote the confidential report of the respondent No.3 on 09th May 2014. A perusal of the said report shows that there is nothing adverse in the said report and the performance of the respondent No.3 has been assessed as satisfactory. However, the Chief Executive Officer of the petitioner No.1 as a Reviewing Officer refused to concur with the opinion of the Reporting Authority and has observed that the respondent No.3 requires to exert more and has observed that the respondent No.3 is not entitled to an annual increment which order has been set aside by the respondent No.2.

3. I have heard learned counsel for the parties. Perused record.

4. The learned counsel for the petitioner has pointed out the provisions of Rule 15 of the Maharashtra Employees of Private Schools Rules of 1981 ('MEPS Rules' for short) which prescribes the procedure for the writing of confidential reports. It is pointed out that as per Sub Rule 3 of Rule 15, the confidential report has to be communicated before the end of August every year. The learned counsel points out that the confidential report was indeed communicated prior to the end of August i.e on 13th August 2014. It

is thus submitted that the respondent No.2 was not justified in holding that the confidential report was communicated belatedly in breach of Rule 15 of the said Rules. Secondly, it is submitted that although the percentage of passing in Geography in the Classes taught by the respondent No.3 was about 91% to 100%, comparatively the students who secured first class was not satisfactory and therefore the Reviewing Authority was of the opinion that the object was not only to impart education, but impart quality education. He therefore, submits that respondent No.2 was not justified in interfering with the order by which the respondent No.3 was held to be not entitled to annual increment.

5. The learned counsel for the respondent No.3 points out that there is a substantial delay in challenging the said order. It is submitted that the impugned order is passed not only on the alleged non-compliance of the Rule 15, but the respondent No.2 has also considered the matter on merits. It is submitted that after the passing of the impugned order, the Management has taken departmental action against respondent No.3 in which he has been dismissed from service and that order is challenged before the School Tribunal and therefore he submits that this Court may not interfere with the impugned order.

6. I have considered the circumstances and the submissions made. The learned counsel for the petitioner is right that the communication of the adverse remark may not be belated, as Sub Rule 3 of Rule 15, provides adverse the confidential remark, to be communicated before the end of August every year and in the present case the respondent No.2 has found that the remark was indeed communicated on 13th August 2014. However, it appears that the respondent No.3 has considered the matter on merits also. It is significant to note that the Principal of the Junior College who is the reporting Authority and who has a better opportunity to watch the performance of the concerned employee, has reported that the performance of the respondent No.3 was satisfactory. It has also come on record that the percentage of the passing of students in Geography which was the subject taught by the respondent No.3 was about 91% to 100%. There is nothing on record as to what was the percentage of the students who had secured first class and for that matter second class. Therefore the contention that because the number of students who had secured first class was less and therefore the adverse remark was recorded cannot be accepted. In any event I do not find that on any such ground the punishment in the nature of holding that the respondent No.3 is not entitled to annual increment could have been passed.

7. There is an additional reason why I decline to entertain this petition which is delay and latches in challenging the impugned order which was passed on 30th March 2015 and the present petition is filed on 04th December 2017. That apart there is subsequent action taken in which the respondent No.3 has been dismissed from service which is subject matter of challenge before the Tribunal. It is not necessary to go into the merits of the said matter.

8. However, considering the overall circumstances no case for interference is made out in the impugned order. The petition is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

**Nilam
Kamble** Digitally signed by
Nilam Kamble
Date: 2020.01.17
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