

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5315 OF 2018

1. Mahatma Phule Yuvak Vikas Mandal,
6, Maji Sainik Colony, Biladi Road,
Adjacent to D.C. College Wall, Deopur,
Dhule, District Dhule
Through its President/Secretary
Ramesh Baburao Sonawane
2. The Incharge Head Master,
Ravindra Ramchandra Patil
Late Man Saheb Minatai Thakare
Niwasi Matimand Vidyalaya, Khapar,
Tq. Akkalkuwa, District Nandurbar .. Petitioners

Versus

1. The Regional Deputy Commissioner,
Social Welfare Department, Nashik Division,
Nashik, District Nashik
2. The District Social Welfare Officer,
Zilla Parishad, Nandurbar
3. Ishwar Ranchod Borase,
Age 51 years, Occu. Service,
R/o. Khapar, Tq. Akkalkuwa,
District Nandurbar .. Respondents

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Mr. Pralhad D. Bachate, Advocate for the petitioners
 Mrs.V. S. Chaudhari, AGP for respondents no. 1 and 2 - State.
 Mr. P. B. Patil, Advocate for respondent no.3

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AND
CIVIL APPLICATION NO. 7511 OF 2021
IN WRIT PETITION NO. 5315 OF 2018

Ishwar S/o. Ranchhod Borse,
 Age 53 years, Occu. Service,
 R/o. Khapar, Tq. Akkalkuwa,
 District Nandurbar .. Applicant

Versus

1. The Regional Deputy Commissioner
Social Welfare Department Nashik
Division Nashik
2. The District Social Welfare Officer
Z.P. Nandurabar
3. The Chairman / Secretary
Mahatmaphule Yuvak Mandal
6, Maji Sainik Colony, Biladi Road,
Adjacent to D.C. College Wall Deopur
Dhule, District Dhule
4. The In-charge Head Master
Late. MasahebMinatai Thakre
Nivasi Matimand Vidyalay Khapar
Tq. Akkalkuwa, District Nandurbar .. Respondents

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Mr. P. B. Patil, Advocate for the applicant
Mrs. V. S. Chaudhari, AGP for respondents no. 1 and 2 - State.
Mr. Pralhad D. Bachate, Advocate for respondents no. 3 and 4
(petitioners in writ petition)

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 22-11-2021

PRONOUNCED ON : 03-12-2021

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition challenges the order passed by Regional Deputy Commissioner, Social Welfare, Nashik Division, Nashik, in Appeal No. 01 of 2017, thereby allowing the appeal filed by respondent no.3 and setting aside the termination order issued to respondent no.3.

3. Respondent no. 3 came to be appointed as a Special Teacher on 30th January, 2003 in petitioner no. 2 - School, which is run by petitioner no. 1. It is the case of the petitioners that at the time of appointment, respondent no.3 was age barred and he produced forged disability certificate dated 30th January, 2004 issued by the Civil Surgeon, General Hospital, Nandurbar, showing that he is disabled to the extent of 45%. Therefore, as per the Government policy, at the time of appointment, age relaxation was given to him. The salary bill of respondent no. 3 was submitted through *on-line* process alongwith his disability certificate. The Social Welfare Department raised an objection about genuineness of the disability certificate of respondent no.3. The petitioners, therefore, asked respondent no. 3 to bring certificate from the Competent Authority i.e. Medical Board. The Medical Board issued certificate that respondent No.3 is suffering from 32% disability. By order dated 17-02-2016, the petitioners terminated the services of respondent no.3.

4. Respondent No.3 challenged the termination order by filing Appeal before the Divisional Commissioner, Nashik Division, Nashik, which was withdrawn by him on the same day i.e. on 05-03-2016. Thereafter, respondent no.3 filed Appeal No.37 of 2016 before the learned Presiding Officer, School Tribunal, Nashik

challenging the termination order. The same was also withdrawn by respondent No.3 as the appeal was maintainable before the District Social Welfare Officer, therefore, the School Tribunal permitted respondent No.3 to withdraw the said appeal. Thereafter, respondent No.3 filed Appeal No. 1 of 2017 challenging his termination order before respondent No.1.

5. The petitioners resisted the said appeal contending that the appeal before respondent No.1 was not maintainable in view of Rule 16 of the Handicap School Code, 1997 (in short, "Code of 1997"). Respondent No.1 after hearing allowed the appeal and set aside the termination order. This order is impugned in the present petition.

6. Heard learned Advocate for the petitioners, learned Advocate for respondent No.3 and the learned AGP for respondents No.1 and 2.

7. Learned Advocate for the petitioners assailed the impugned order on the ground of jurisdiction. He submitted that in view of Rule 63 of the Code of 1997, since the service conditions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'MEPS Act') are applicable to the teaching and non-teaching staff of private primary and secondary

school, the same service conditions are applicable to the teaching and non-teaching staff working in Special Schools for disabled. He, therefore, submits that in view of this provision, appeal under Section 9 of MEPS Act before the School Tribunal is the remedy available to respondent No.3 and not the appeal before respondent No.1. He submitted that the objection as to the jurisdiction is not considered in proper perspective by respondent No.1. According to him, respondent No.1 had no jurisdiction to entertain the appeal filed by respondent No.3 and since the impugned Judgment is without jurisdiction, the same is unsustainable. In support of his submission, he relied upon the decision in ***Vasantrao Naik Education Society Versus Presiding Officer, School Tribunal, Aurangabad & another***, reported in ***(2001) 1 CLR 137***.

8. The learned Advocate for respondent No.3, on the other hand, submitted that the appeal filed by respondent No.3 before respondent No.1 was maintainable in terms of Rule 86 of the Code of 1997 and respondent No.1 had jurisdiction to entertain the appeal. He, therefore, submitted that there is no merit in the writ petition, the same may be dismissed.

9. The learned AGP adopted the arguments of respondent No.3 and supported the impugned order.

10. Rule 77(5) of the Code of 1997 provides the punishment of termination of service as a major penalty. Rule 80(1) of the Code of 1997 provides that if there are charges of serious misconduct on the employee and in the eventuality of said charges are proved, there is possibility of termination, in that case inquiry needs to be held. Rule 83 of the Code of 1997 provides for constitution of inquiry committee. Rule 86 of the Code of 1997 provides remedy of appeal against the termination order, before Divisional Social Welfare Officer (respondent no.1).

11. It is not in dispute that the termination is a major penalty and admittedly no inquiry was conducted by the petitioners before terminating the services of respondent no. 3. In view of Rule 86(5) of the Code of 1997, there is no substance in the argument of the petitioners that, the appeal filed by respondent no.3 was not maintainable before respondent no.1 and the impugned order is without jurisdiction.

12. In **Vasantrao Naik Education Society** (*supra*), the learned Single Judge of this Court in the facts of that case held that, the appeal filed by employee of the Special School for disabled under Section 9 of MEPS Act is maintainable. In this Judgment, this Court has considered provisions of Sections 2(6)(7)(19)(21)(24) (25) and Section 9(1) of the MEPS Act. Rule 86 and the other

relevant provisions of the Code of 1997 are not referred in this decision. Hence, this ruling is of no help to the petitioners.

13. The argument of the petitioners that since the Rule 63 of the Code of 1997 provides that service conditions contained in the MEPS Act are applicable to the teaching and non-teaching staff of private primary and secondary schools, the same service conditions shall apply to the teaching and non-teaching staff working in Special Schools for disabled, therefore, the remedy of appeal under Section 9 of the MEPS Act is the proper remedy, is misconceived and unacceptable. The said interpretation sought to be canvassed by the petitioners is fallacious. Merely because, the service conditions applicable to the employees governed by the MEPS Act are made applicable to the employees working in the special schools, by no stretch of imagination it can be said that the remedy of appeal under Section 9 of the MEPS Act is required to be availed by the employees governed by the Code of 1997, more particularly, in view of specific remedy of appeal provided under Rule 86(5) of the said Code of 1997.

14. This Court is not adverting to the merits of the impugned order since only the point of jurisdiction is pressed into service by the learned Advocate for the petitioners.

15. For the aforestated reasons, there is no substance in the challenge raised by the petitioners to the impugned order. No case is made out by the petitioners to exercise extraordinary writ jurisdiction. The petition is, therefore, dismissed. Rule is discharged. No order as to costs.

16. In view of dismissal of the writ petition, Civil Application No. 7511 of 2021 is allowed in terms of prayer clause 'B'.

(NITIN B. SURYAWANSHI)
JUDGE

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