

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

WRIT PETITION NO.927 OF 2022

**VIJAYKUMAR VENKAT GORE
VERSUS
SECRETARY RURAL EDUCATION SOCIETY AND OTHERS**

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Advocate for Petitioner : Mr. Dr. R. J. Godbole
AGP for Respondent No.4/State: Mr. P. N. Kutti
None for Respondent Nos.1 to 3

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 4th April, 2022

ORDER :

1. This petition filed under Articles 226 and 227 of the Constitution of India takes exception to the judgment and order dated 03/01/2022 passed by the Presiding Officer, School Tribunal, Latur in Appeal No.13/2019, thereby dismissing the appeal filed by the petitioner challenging his termination.

2. The petitioner who was serving in respondent no.2 - School as Assistant Teacher since 2009. His services are duly approved and he was confirmed in the year 2011.

3. On 29/05/2016, a complaint was lodged against the petitioner by a colleague lady Teacher alleging therein that the petitioner has

outraged her modesty. On the basis of the information given by the said Teacher, Crime No.2915/2016 was registered at Murud Police Station, Taluka and District Latur under Sections 354(A), (D), 504 & 506 of the Indian Penal Code (for short “IPC”) and after filing of the charge-sheet, the case is numbered as S.C.C. No.2421/2016 before the Competent Criminal Court.

4. On the basis of the said complaint, the Management issued suspension order to the petitioner and he was suspended vide order dated 30/07/2016. Thereafter, respondent No.2 vide letter dated 01/08/2016 called upon the petitioner as well as the lady Teacher who complained against the petitioner to appoint their representative on an inquiry committee. Accordingly, the petitioner submitted the name of his representative to be appointed on the inquiry committee by letter dated 08/08/2016. It appears from the record that thereafter, preliminary inquiry was conducted without giving an opportunity of hearing to the petitioner and one member inquiry committee, who conducted preliminary inquiry, recommended dismissal of the petitioner from service after the decision in criminal case filed against the petitioner. Thereafter, the Management passed a resolution directing the Headmistress to forward a letter to the

Education Officer to provide list of approved State Awardee Teachers to enable the Management to constitute inquiry committee in terms of Management's resolution dated 27/07/2016. It appears from the record that, pursuant to the said direction, the Headmistress by letter dated 18/01/2017 called the list of State Awardee Teachers from respondent no.3/Education Officer.

5. In the meanwhile, the petitioner had approached this Court by filing Writ Petition No.9157/2018 challenging the suspension order, wherein the Management came out with a reply that by order dated 12/11/2016, the petitioner is already dismissed by accepting the report of preliminary inquiry.

6. The petitioner challenged the said termination order by filing Appeal No.13/2019, which is dismissed by the School Tribunal, Latur by relying on deleted provision of Rule 28[2] of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "MEPS (CS) Rules,1981"). Reliance is also placed by the Tribunal on Rule 28 (5) (B) of MEPS (CS) Rules, 1981, as according to the Tribunal, the said provision does not state that the act of moral turpitude should have been done within the school premises and within the school working hours, but it is sufficient that the immoral

behavior was done with the female employee. The challenge of the petitioner to the effect that no proper opportunity of hearing was given to the petitioner during the preliminary inquiry is negated by the Tribunal holding that the petitioner was called upon to furnish his explanation, which is sufficient compliance of the principles of natural justice. The Tribunal, therefore, dismissed the appeal filed by the petitioner. Hence, this petition.

7. Heard the learned Advocate for the petitioner. The respondent Nos.1 to 3 though served have not filed any appearance.

8. It is mentioned in the impugned order that, because of registration of Crime No.132/2016, the Society and the School are defamed. It is further mentioned that as per the report of the inquiry committee, till the final decision of Crime No.132/2016, the petitioner is dismissed from service.

9. Admittedly, dismissal is a major penalty which is imposed on the petitioner without holding inquiry as per the procedure prescribed in Rules 33, 36 and 37 of MEPS (CS) Rules, 1981. The correspondence referred above indicates that list of State Awardee Teachers was called from the Education Officer by the Headmistress,

with a view to constitute an inquiry committee. Even the names of petitioner and complainant/teacher's representatives were called which were furnished by them. In that view of the matter, the impugned order which is passed only on the basis of preliminary inquiry wherein no opportunity of hearing was given to the petitioner cannot be sustained.

10. The Tribunal has committed a serious error apparent on the face of record in dismissing the appeal filed by the petitioner holding that there was proper compliance of principles of natural justice. The Tribunal has lost sight of the fact that procedure contemplated in Rules 33, 36 & 37 of MEPS (CS) Rules, 1981 is not followed before imposing major penalty on the petitioner and therefore, the impugned order passed by the Tribunal is unsustainable in law and facts of the case.

11. In the result, writ petition succeeds. The impugned order dated 03/01/2022 passed by the Presiding Officer, School Tribunal, Latur in Appeal No.13/2019 is quashed and set aside. The matter is remitted back to the School Tribunal, Latur for decision on merits.

12. Needless to mention that the Tribunal shall decide the matter in accordance with law on its own merits without being influenced by the observations of this Court in the present order.

[NITIN B. SURYAWANSHI, J.]

Sameer