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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3639 OF 2018**

Mumbai Mahanagarpalika

Shikshak Sena & Ors.

..... Petitioners.

V/s

Municipal Commissioner of

Greater Mumbai & Ors.

..... Respondents.

Mr. V.S. Tadke i/b Mohan B. Gawade for the Petitioners.

Mr. Burhan Bukhari a/w Ms. R.M. Hajare for MCGM.

**CORAM: NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE: 15TH DECEMBER, 2022.

P.C.:- (*Per Nitin W. Sambre, J.*)

1] This Petition under Article 226 of the Constitution of India is filed praying for quashing of Circulars dated 27.10.2017 and 06.06.2018 issued by Respondent No.1 – Commissioner, Municipal Corporation of Greater Mumbai and punishment orders issued to Petitioner Nos. 9 to 11 in accordance with the aforesaid circulars.

2] Brief facts for deciding present Petition are as under:-

3] Petitioner No.1 claims to be representing member employees employed by Respondent-Municipal Corporation of Greater Mumbai (Hereinafter shall be referred to as “Corporation” for the sake of brevity). It is claimed that Petitioner No.1 is a registered Trade Union under the Trade Unions Act. Petitioner Nos. 2, 3 and 4 are employees of the Corporation and working as teachers. By way of present Petition, Petitioners are seeking directions from this Court to the Corporation not to take punitive action in pursuance to the Circulars referred to above issued by Respondent No.1. Petitioners have also questioned the legality of the aforesaid Circulars and have sought quashing of the same with prayer for interim relief of directing Respondent No.6 not to implement Circulars to the extent of punishment clause. A declaration is sought that both the Circulars are directory and not mandatory in nature.

4] It is claimed by the Petitioners that above Circulars issued by the Respondent-Corporation are similar to that of the Government Resolutions. Circulars, according to them, provide for standards of punishment in the form of stoppage of one increment to three increments etc in case if parameters/instructions provided in the said

Circulars are not adhered to by the employees (Teachers) who are conferred with duties of teachers. According to Petitioners, Circulars provide for basic as well as additional standards and the standards mentioned therein if not complied with, provide for punishment.

5] Legality of the said Circulars is questioned, claiming that Right of Children to Free and Compulsory Education Act, 2009 (Hereinafter shall be referred to as “RTE Act” for the sake of brevity) does not provide for any such mechanism and the act on the part of Corporation is in excess of its powers and without any authority to frame standards and issue Circulars. According to Counsel for the Petitioners, the Circulars run contrary to very scheme of Section 24 of the Act. Petitioners further claim that standards which are prescribed under the Circulars cannot be complied with, particularly having regard to the metropolitan structure of the Society within the jurisdiction of the Respondent-Corporation and also in view of it’s multi-linguistic nature. It is claimed that the Act itself does not provide for any punishment which is sought to be imposed by the Respondent-Corporation. It is further claimed that once the Government in accordance with the RTE Act has not proposed any

punishment, Respondent-Corporation in contravention thereof or in contravention of the statute cannot impose punishment. Counsel for the Petitioners has claimed that Circulars are implemented only against teachers and not against other Officers of the Corporation who are equally conferred with all corresponding duties and responsibilities under the Act and as such Circulars go contrary to the provisions of Article 14.

Further contentions of the Counsel for Petitioners are, having regard to the service conditions, teachers who are initially appointed to teach in a particular medium after being declared as surplus are shifted to some other medium of imparting instructions to the pupils. In that view of the matter, it is very difficult for teachers to achieve very target pursuant to the instructions issued by the Corporation under the Circulars. As such, it is claimed that Circulars are liable to be quashed and set aside or in the alternative directions be given that clause of punishment prescribed under the Circulars is not mandatory and same is directory in nature. It is further claimed that punishment awarded to the Petitioners-employees has to be held to be without

authority of law and that being so order of punishment is liable to be quashed and set aside.

6] Counsel for Respondent-Corporation on the other hand submits that Circulars are in tune with very provisions and aims and objects of the RTE Act. According to him, if provisions of Sections 24 and 29 of the Act are appreciated, fact remains that Circulars are in tune with the said provisions. According to the Counsel for Respondent-Corporation, Circulars itself provide for mechanism of redressing grievance of teachers and if any grievance is pending, same can be looked into by the Respondent-Corporation. He would further urge that action of imposing punishment in the form of stoppage of increments is in accordance with Discipline and Appeal Rules of the Corporation and the aggrieved teachers have every remedy under the RTE Act. He would urge that provisions of the RTE Act and Article 21 of the Constitution have rightly prompted the Respondent-Corporation to issue the Circulars so as to achieve appropriate standards of education in the schools run and managed by the Respondent-Corporation. It is claimed that Circulars are issued with an intention

to keep in mind right of the children to have elementary education and in the interest of overall development of the children. As such, it is claimed that Petition is liable to be dismissed.

7] We have appreciated the aforesaid submissions.

8] Reading of the Circulars dated 27.10.2017 and 06.06.2018 which are impugned herein, shows that the Circulars aptly refer to Government Resolutions dated 30.03.2016 and 14.07.2017 and in reply Respondent-Corporation has also referred to the Circular of the State Government dated 22.06.2015. Fact remains that source of powers to issue Circulars is based not only on the provisions of the RTE Act, Article 21-A of the Constitution of India but also on the provisions of the Corporation Act.

9] The RTE Act prescribes modalities so as to achieve very object of providing free and compulsory education for the children aged between 6 to 14 years and the Article 21-A endorses such right of the children. The RTE Act also provides for check on all neighbourhoods

through regular surveys to identify children who are eligible for receiving education but do not have means to have the same. Local bodies like Corporation are claimed to be given responsibility and role to bridge the gap qua education system and enhance the quality of education.

10] The statement of objects and reasons of the RTE Act is required to be taken into account. Fact remains that every child has a right to have proper full time elementary education of satisfactory and equitable quality in the schools run by the local bodies also. Compulsory education casts obligation on the appropriate Government including Corporation to provide and ensure admission, attendance and completion of elementary education. Local Authorities like Respondent-Corporation, parents, Schools and the Teachers are duty bound for providing free and compulsory education to the children.

11] The RTE Act was enacted by the Parliament on 04/08/2009 which came into effect on 01/04/2010, which provides for adoption of modalities for free and compulsory education for the children

between the age of 6 to 14 years. It prescribes minimum norms for elementary schools, prohibits unrecognised schools. It casts responsibility on the Centre, State and Local Bodies to rectify gaps in education system with an intention to enhance the quality of education. It casts duty on the Government including Local Bodies to develop curriculum which would ensure the all-round development of the children, to develop and build child's knowledge, human potential and talent. As such, the Act to certain extent provides checks and balances and also ensure implementation of the provisions of the Act. Keeping in mind the object with which the enactment is brought into force, for its implementation, the Act would also cast duty on the teachers including teachers of Local Bodies.

12] As such pursuant to the provisions of Sections 24 and 29 of the Act, it is claimed by the Respondent/Local Body that they have worked out modalities based on Government decisions dated 22/06/2015, 30/03/2016, 01/01/2006 and 14/07/2017. Section 24 provides for duties of the teacher i.e. to impart lessons and achieve appropriate result by adopting curriculum and evolution of procedure. The aforesaid Government Resolutions including the one

dated 27/10/2017 is with an intention to develop the children by providing better quality of education so as to improve their educational performance. It appears that Section 83(3) of the Maharashtra Municipal Corporation Act, 1888 empowers the Municipal Commissioner to impose penalties, punishments on the municipal employees. The Circular dated 27/10/2017 mandates teachers to comply with 10 standards out of 25 prescribed therein and maintain appropriate score. Failure to maintain standards and give appropriate result provides for penalties.

13] The standards which are prescribed in the aforesaid circulars are informed to be implemented upon decision to that effect taken by the Maharashtra State Council of Education & Research Training (MSCERT) by virtue of provisions of Section 29(2) and 24 of the RTE Act read with Rule 22(3) and 23(2)(b) of MRTE Rules 2011. As a sequel of above, such teachers who have under-performed or who have failed to deliver below the standards prescribed vide Circular Dated 27/10/2017 are required to be proceeded with by imposing minor punishments such as stoppage of increment. Though Petitioner Nos. 9 to 11 have claimed that they have suffered an order of such

penalty, additional remedy of second appeal is provided to such affected teachers under Rule 25 of the Discipline and Appeal Rules 2015. The said appellate remedy provides for second appeal against the order of First Appellate Authority and the fact remains that the Petitioners instead of questioning the order of First Appellate Authority before the Second Appellate Authority, (in spite of alternative remedy is available) have straightaway approached before this Court.

14] Even if petitioner Nos. 9 to 11 are punished for not achieving the required results as prescribed in the aforesaid Government decisions and the Circulars, petitioner Nos.9 to 11 had taken recourse to the remedy of questioning the order of imposing punishment before the First Appellate Authority. The First Appellate Authority has dismissed their appeals.

15] The respondent-corporation has come through its affidavit-in-reply and brought to our notice that pursuant to the provisions of Rule 25 of the Discipline and Appeal Rules, 2015, remedy of second appeal is provided to the aggrieved parties like petitioner Nos.9 to 11 of

preferring appeal before the Second Appellate Authority.

16] Admittedly, in the case in hand, petitioner Nos.9 to 11 have not approached the Second Appellate Authority thereby exhausting the alternate remedy. The said petitioners have straightway approached this Court stating that the Primary Disciplinary Authority and the First Appellate Authority have failed to consider the field difficulties faced by the teachers in achieving appropriate targets.

17] The fact remains that after petitioner Nos.9 to 11 were declared surplus in 'A' subject, they were absorbed so as to impart lessons in 'B' subject. For getting themselves adjusted in imparting lessons to the pupils in 'B' subject, the teachers like the aforesaid petitioners might take some time or need detail study of said subject. These types of field difficulties, ofcourse, can be brought to the notice of Second Appellate Authority also who, in our opinion, can remain sensitive to the issue.

18] In the aforesaid background, merely because the petitioners have questioned the Government Circulars and the

decisions in the petition, that by itself will not make the petition directly maintainable before this Court, as we are of the view that petitioners, particularly, petitioner Nos.9 to 11 must exhaust the alternate remedy of preferring second appeal before the Second Appellate Authority pursuant to Rule 25 of the Discipline and Appeal Rules, 2015.

19] As such, we permit the said petitioners to exhaust alternate remedy as provided in view of aforesaid observations. In case if second appeal is preferred by petitioner Nos.9 to 11 to the Second Appellate Authority, we expect the Second Appellate Authority to deal with the second appeal without being influenced by the disposal of the present petition.

20] The Second Appellate Authority shall not insist petitioner Nos.9 to 11 to explain the delay, as the said petitioners were pursuing the cause before this Court.

21] As such, without commenting on the legality of the Circulars/Resolutions, which are questioned by the petitioners in the

petition, we dispose of this petition with directions to the Appellate Authority to decide the claim of petitioner Nos.9 to 11, in case, if second appeal is preferred on its own merits without being influenced by the disposal of the present petition.

22] With aforesaid observations, we dismiss the petition with liberty to all the petitioners to approach this Court afresh, in case, if the order of the Second Appellate Authority is adverse to their interest.

[SHARMILA U. DESHMUKH, J.]

[NITIN W. SAMBRE, J.]