

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

179 WRIT PETITION NO.4760 OF 2023

SHASHIKANT VITTHALRAO KHAROSEKAR
VERSUS
DEPUTY DIRECTOR OF EDUCATION AND OTHERS

.....
Mr. M.P. Tripathi, Advocate for the Petitioners
Mr.P.S. Patil, AGP for the Respondent/State.
Mr.U.B. Bondar, Advocate for Respondent No.3.

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 26th APRIL, 2023.**

PER COURT :-

1. We have heard the learned Advocate for the Petitioner and the learned AGP. We have also heard Shri Bondar, the learned Advocate, who is on the panel of Respondent No.3 and who appeared in this Court on the request of the Court.

2. The Petitioner was placed under suspension on 6th October, 2022. A request was made to the Divisional Deputy Director of Education, Latur Division, Latur to withdraw the suspension order.

3. By order dated 9th August, 2012 delivered by this Court in Writ Petition No.4994 of 2012 (Shri. Datta Krupa Shikshan Sanstha and another Vs. The State of Maharashtra and others), an Administrator was appointed. The Block Education Officer was subsequently made the Chairman of the

Administration Committee, comprising of the Deputy Education Officer (Secondary) as one of the members.

4. Consequent to the direction dated 3rd January, 2023, issued by the Divisional Deputy Director of Education, Latur Division, Latur, the Deputy Education Officer (Secondary) Smt. Trupti Andhare, as an Administrator, restored the Petitioner on the position of Clerk by order dated 8th February, 2023. The Divisional Deputy Director of Education, Latur Division, Latur has taken a stand, vide letter dated 17th February, 2023 addressed to Smt. Trupti Andhare, that she has conducted a meeting unauthorizedly and has issued an unsustainable order dated 3rd January, 2023. Subsequently, the Divisional Deputy Director of Education, Latur Division, Latur addressed a letter dated 13th March, 2023 to the Administration Committee, thereby setting aside the order dated 3rd January, 2023 and reverting the Petitioner back to the status of a suspended employee.

5. It is obvious that the Divisional Deputy Director of Education, Latur Division, Latur has not heard the Petitioner before reverting him to the position of a suspended employee in the backdrop of the order dated 3rd January, 2023. It is well settled that an employee does not have a right of explanation or hearing, if he is to be suspended pending disciplinary action. However, it is only when an order of suspension is being issued by way of a

punishment, that such an employee has to be heard.

6. In view of the above, the impugned order dated 13th March, 2023 and the communication dated 24th March, 2023 shall be kept in abeyance with the following directions:-

A) An opportunity of hearing be granted to the Petitioner, as to why the order dated 3rd January, 2023 (withdrawing his suspension and reverting him to the position of a Clerk), should not be cancelled.

B) While hearing the Petitioner, all stakeholders, if any, would also be granted an opportunity of hearing.

C) After such hearing, the Divisional Deputy Director of Education, Latur Division, Latur, shall, pass an appropriate order, within 60 days.

D) If the Petitioner is aggrieved by such order, he would be at liberty to seek a remedy as may be permissible in law.

E) Needless to state, until such decision is pronounced, after the hearing by the Divisional Deputy Director of Education, Latur Division, Latur, the Petitioner would not be reinstated as a

Headmaster until the decision is delivered.

F) The Petitioner would be entitled for subsistence allowance for the period of his suspension, until the order is passed by the Divisional Deputy Director of Education, Latur Division, Latur, in view of the above directions.

G) Needless to state, the impugned orders which are kept in abeyance, would merge into the final order passed by the said authority.

7. **This Petition is disposed off**, with the above directions.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

sga/