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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2038 OF 2022

Vijay Uttam Doiphode & Anr. Petitioners

Vs.

The State of Maharashtra & Ors. Respondents

Ms.Rebecca Gonsalves for the Petitioners

Mr.Milind V. More Addl. G.P. with Mr.S.B.Gore, A.G.P. for
the State

**CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE,J.**

DATED : APRIL 10, 2023

ORAL ORDER (PER : ACTING CHIEF JUSTICE)

1. Rule.

Rule made returnable forthwith. By consent of
the parties, taken up for final disposal.

2. The Petitioners were appointed as members of the
erstwhile Child Welfare Committee for a period of three
years from 06.04.2018 to 05.04.2021. Their tenure was
extended on 22.04.2021. On or about 07.09.2021, the
appointment of the Petitioners as members of the Child

Welfare Committee is terminated. The same is subject matter of challenge before this court.

3. The *prima donna* contention of the learned Counsel for the Petitioners is that prior to passing of the impugned order, show cause notice was issued to the Petitioners, in which the grounds of termination were not stated nor any explanation was sought from the Petitioners on the grounds of which the Petitioners have been terminated. The termination is stigmatic. The Petitioners are not interested in continuing as members of the Child Welfare Committee, however, as the order is stigmatic, the Petitioners have assailed the same.

4. The learned Addl.G.P. submits that the Petitioners were issued with the show cause notice. Thereafter, inquiry was conducted and upon concluding that the Petitioners were guilty of various acts and omissions, the action was taken. The order is rightly passed by the authorities.

5. According to the learned Addl. G.P. the doctrine of pleasure applies. The Petitioners have misused the powers as the Child Welfare Committee. They indulged into harsh act of transferring 15 inmates on the spot without

considering the mental disturbance of the inmates. The same is an act of negligence. The Petitioners did not adhere to the provisions of Juvenile Justice (Care and Protection) Act, 2015.

6. Inquiry was conducted. The Petitioners did not respond to the inquiry. Considering the facts and circumstances and the behaviour of the Petitioners, the action was taken.

7. We have considered the submissions. The show cause notice issued to the Petitioners nowhere gives the details of the grounds on which the action is sought to be taken by the Respondents. The show cause notice precedes the purported action so that the delinquent is made aware of the grounds to which he / she has to meet. In the present case, the show cause notice did not spell out the grounds which are found in the impugned order and the affidavit in reply filed by the Respondents. The reasons cannot be substituted by affidavit in reply. The doctrine of pleasure would apply in case wherein appointment is made at the pleasure of the Government. In that case, the Respondents may do away with the service of the members upon the existence of the grounds available, however, the court would not go into the

sufficiency of the grounds in exercise of its powers of judicial review. In the present case, the impugned order terminating the appointment of the Petitioners as members of the Child Welfare Committee is stigmatic. The show cause notice nowhere spells out the ground on which the action is purported to be taken and eventually is undertaken. Such an order cannot be sustained.

8. On the last date of hearing, the learned counsel for the Petitioners on instructions made a statement that the Petitioners are not interested to be members of the Child Welfare Committee. The Petitioners are assailing the impugned order, as the same is stigmatic.

9. In light of that, though we are inclined to set aside the impugned order, the Petitioners certainly would not continue as members of the Committee and it is for the Respondents to appoint fresh members.

10. In light of that, following order is passed:

- a. The impugned order is quashed and set aside.
- b. As undertaken, the Petitioners do not wish to

continue as members. Fresh members are already appointed. Newly inducted members can continue as the State Government may think fit and proper.

d. So far as grant of Honorarium is concerned, the Petitioners can file their representation with the Respondents. The Respondents may take decision on the representation on its own merits in accordance with law expeditiously preferably within three months.

e. Rule accordingly made absolute in above terms.

f. The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)