

(2010) 10 BOM CK 0040
In the Bombay High Court
Case No : Writ Petition No. 4865 of 2010

Kailash Bholanath Dhengle

APPELLANT

Vs

The Education Officer (Sec.), Zilla Parishad, Adarsha
Shikshan Mandal and Chhotubhai Patel High School

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 33, 35(1), 35(2)

Citation : (2011) 1 ALLMR 803 : (2011) 3 BomCR 806 : (2011) 1 MhLj 308

Hon'ble Judges : S.A. Bobde, J; Mridula Bhatkar, J

Bench : Division Bench

Advocate : P.N. Shende, for the Appellant; A.M. Deshpande, A.G.P. for Respondent No. 1 and M.P. Khajanchi, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—Rule, returnable forthwith. Heard by consent of the parties.

2. The petitioner has challenged the order dated 16/9/2010 issued by the Headmaster thereby placing the petitioner under suspension.

3. Shri Shende, learned Counsel for petitioner, has submitted that the Headmaster had no authority to suspend the petitioner because such power is vested with the management under Sub-rule 1 of Rule 35 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 which runs as follows

35. Conditions of suspension.

(1) In cases where the Management desires to suspend an employee, he shall be suspended only with the prior approval of the appropriate authority mentioned in Rule 33.

4. Sub-rule 1 of Rule 35 of the Maharashtra Employees of Private Schools

(Conditions of Service) Rules, 1981 contemplates that an employee can be suspended with the prior approval of the appropriate authority "where the Management desires to suspend an employee". This shows that the real authority to suspend an employee vests in the management. Rule 35 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 does not contemplate who should issue the suspension order. In the circumstances, a suspension order may be issued by the Management or by a person authorized by the Management to do so. In the present case, we find, that there is a resolution dated 10th of September 2010 to the effect that it would be appropriate to initiate the departmental enquiry against the petitioner. Thereafter, the Management has issued a letter of authority to the Headmaster dated 15th of September 2010 directing him to execute the resolution of the Management and to place the petitioner under suspension.

5. It is further submitted by the learned Counsel for the petitioner that the Headmaster is not a "Chief Executive Officer" as contemplated by Clause (c) of Rule 2 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 which defines the Chief Executive Officer as follows

Chief Executive Officer" means the Secretary, Trustee, Correspondent or a person by whatever name called who is empowered to execute the decisions taken by Management.

6. We find that the definition does not prohibit the Management from empowering any person other than the Secretary, Trustee or a Correspondent to execute its decision. In the facts and circumstances of the case, there is no merit in the writ petition. Writ petition is therefore, dismissed. Rule discharged. No order as to costs.