

Shri. Yashwant Suryakant Mane,

V/s.

Shri. Ram Education Society Phaltan and others.

Order below Exh. 30

(Date - 10th March, 2021)

Perused the application, say of the respondent No. 3 thereon, heard both parties at length.

2) Present application has been filed by the appellant for production of total 07 documents. As per the appellant, those documents are important, pertaining to the inquiry, therefore their production be allowed. The Respondent no. 3 objected the production by filing his say overleaf. As per him, the documents which the appellant intends to produce are not part of inquiry, were not produced during inquiry, therefore, cannot be produced in this appeal. Moreover, the application does not contain reason contemplated under O.41 R.27. On these count also production cannot be permitted. Further, the respondent no. 1 and 2 vide their say at Exh. 39, objected production of documents filed by the appellant at Exh. 3/9 and 10 and Exh. 3/1 to 7 contending that, they are not part of inquiry proceeding.

3) No doubt, present proceeding is an appeal and as per section 10 of MEPS Act this Tribunal is having powers of appellate Court under C.P.C. But, it must be kept in mind that, it is a first fact finding Tribunal.

4) It is contention of the respondents that condition precedent for filing additional documents at the stage of appeal contemplated under O.41 R.27 is not stated in this application. For that purpose, it is necessary to see what that provision says. O. 41 R.

27 is reproduced as under,

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if --

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

((aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or)

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce Judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

5) As per that provision, the parties to an appeal can be permitted to produce the documents if they fulfill conditions mentioned above. No doubt, in present application the appellant has not specifically stated as to why he is producing those additional documents at this stage. But, it is settled proposition of law that procedural law is handmaid of justice and hyper technical view should be avoided and preference should be given for deciding the matter on merit. Hence, in my view, even without

express statement in present application, the nature of documents can be looked into for ascertaining whether they could have been produced during inquiry.

6) The documents in issue are regarding the incidents occurred subsequent to the termination order. They are regarding the report of a member of inquiry committee i.e. state awardee teacher and correspondence related thereto. Therefore, in my view, those documents are certainly relevant for proper adjudication of this matter. As those documents came into existence after completion of inquiry, question of their production before inquiry committee doesn't arise. Therefore, in my opinion, the requisite condition contemplated under R.27 (aa) is also stands fulfilled.

7) In the light of above discussion, I have come to the conclusion that, it is just and expedient to allow the production of the documents filed by the appellant alongwith Exh. 3 and 30. In the result following order.

ORDER

Production of documents filed alongwith Exh. 3 and 30 is allowed.

Date : 10th March 2021.
Place: Kolhapur.

sd/-
(A. G. Deshingkar)
Presiding Officer,
School Tribunal, Kolhapur.