



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1508 OF 2024

Sanjay s/o Eknath Baviskar,
Age – 57 Years, Occupation – Service,
Resident of Plot No. -407, DnyanDeep Society,
Dhule Road, Nandurbar – 425412
Cellphone No. - 8828067162
Email- bsanjaye@gmail.com

..Petitioner

Versus

1. The State of Maharashtra,
Through – the Secretary, Rural Development,
Department, Mantralaya, Mumbai – 400032.
2. Maharashtra Jeevan Pradhikaran,
Through – The Chief Administrative Officer,
Cidco Bhavan, South Wing, Belapur,
New Mumbai – 400614
Email – cao@mjp.gov.in
Phone Nos – 022 – 27571673, 27570166, 27578409.
3. The Zilla Parishad,
Nandurbar,
Through – The Chief Executive Officer,
01st Floor, New Administrative Building,
Tokartalao Road, Nandurbar – 425412
Email Id – dyceogadnabr@gmail.com
Phone Nos – 02564 – 210224, 210241. ..Respondents

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Mr. Anand Chawre, Advocate for the Petitioner.
Mr. S. K. Tambe, AGP for Respondent No.1.
Mr. Vinod Patil, Advocate for Respondent No.2.
Mr. P. S. Patil, Advocate for Respondent No.3.

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**CORAM : RAVINDRA V. GHUGE AND
S. G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 15th FEBRUARY, 2024.
PRONOUNCED ON : 23rd FEBRUARY, 2024.**

JUDGMENT (Per: S. G. Chapalgaonkar, J.):-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has approached this Court under Article 226 of the Constitution of India and has impugned the order dated 23.01.2024 passed by Respondent No.3-Zilla Parishad, Nandurbar thereby repatriating him to the parent department i.e. Respondent No.2-Maharashtra Jeevan Pradhikaran.

3. The Petitioner contends that he is an executive engineer appointed by Respondent No.2-Maharashtra Jeevan Pradhikaran. On 27.08.2021 he was sent on deputation to the establishment of Respondent No.3-Zilla Parishad, Nandurbar in its Rural Water Supply Division. When the Petitioner joined his duty, the implementation of Jal Jeevan Mission Programme was lagging behind and the Petitioner by his efforts substantially improved ranking of Respondent No.3 from 34th to 7th position in preparing plans, estimates and draft project report in the State. His performance has been appreciated by the higher Authorities during periodic meetings.

4. According to the Petitioner, on 01.09.2023 in the general meeting of the Zilla Parishad, bald and baseless allegations were leveled against him. Consequently, Resolution No.316 was passed to send him on compulsory leave. The Petitioner was neither given prior notice of agenda, nor was he given an opportunity to put up his stand. Further Respondent No.3 is not empowered to take disciplinary action against Class-I officers on deputation. As such, Resolution passed by Respondent

No.3 is *per se* ultra vires. On 08.12.2023, the Revenue Commissioner at Nasik communicated that the provisions of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 does not contain enabling provisions empowering Zilla Parishad to initiate any administrative or departmental action against Class-I employee on deputation. The action under impugned communication thereby repatriating the Petitioner to his parent department without issuing three months advance notice violates mandatory condition of deputation. Therefore, the Petitioner urges to quash and set aside the impugned communication.

5. Mr. Chaware, learned Advocate appearing for the Petitioner vehemently contends that bare perusal of Resolution dated 01.09.2023 would depict adverse and defamatory contents that attributes stigma on the Petitioner. Such stigmatic and punitive action without compliance of principles of natural justice cannot be sustained in law.

6. Mr. Vinod Patil, learned Advocate appearing for Respondent No.2-Maharashtra Jeevan Pradhikaran and Mr. P. S. Patil, learned Advocate appearing for Respondent No.3-Zilla Parishad, Nandurbar submits that the employee on deputation does not possess any right to continue on the post of his deputation. His deputation is always subject to the requirement of the parent department and at the pleasure of the department. Considering the exigency of administration, the employee can be repatriated to the parent department. The repatriation of the Petitioner is done to secure better administration. Mr. Vinod Patil, learned Advocate appearing for Respondent No.2-Maharashtra Jeevan Pradhikaran, on instructions submits,

although no advance notice has been issued by Respondent No.3 before repatriating the Petitioner, however, Respondent No.2 has no complaint and has no difficulty to accommodate Petitioner on his original post.

7. We have heard the learned Advocates appearing for the respective parties so also perused the record made available. Apparently, the Petitioner is employee of Respondent No.2- Maharashtra Jeevan Pradhikarn. However, on his request he was deputed on establishment of Zilla Parishad, Nandurbar in its Rural Water Supply Department as per office order dated 27.08.2021. The Annexure to the deputation order contains certain terms and conditions. Clause No.1 states as under:-

“१. **प्रतिनियुक्तीचा कालावधी** — हे अधिकारी ज्या तारखेला प्राधिकरणातील सेवेतील पदाचा कार्यभार सुपूर्द करतील त्या तारखेपासून स्वीयेत्तर सेवेचा प्रारंभ होईल आणि ती सेवा ज्या तारखेला ते आपल्या प्राधिकरणाच्या पदाचा कार्यभार पुन्हा स्वीकारतील त्या तारखेला समाप्त होईल तसेच संबंधीत अधिका—यांची प्रतिनियुक्ती समकक्ष पदावर करण्यात यावी.

प्रथमतः तीन वर्षांच्या कालावधीसाठी हे अधिकारी येथे प्रतिनियुक्तीवर राहतील, परंतु...

(एक) जर त्यांची सेवा लोकसेवेच्या हिताच्या दृष्टीने शासनाला आवश्यक वाटली तर, प्रतिनियुक्तीच्या कालावधी संपण्यापूर्वी कोणत्याही वेळी त्यांना परत बोलावून घेण्याचा अधिकार प्राधिकरण राखून ठेवील.

(दोन) जर त्यांची सेवा स्वीयेत्तर नियोक्त्याला आवश्यक वाटली नाही तर, त्यांना मूळ विभागाकडे परत पाठविण्याची मुभा स्वीयेत्तर नियोक्त्याला राहिल. मात्र याप्रमाणे परत पाठविण्यापूर्वी स्वीयेत्तर नियोक्त्याने प्राधिकरणाला/सक्षम प्राधिका—याला ३ महिन्यांची नोटीस दिली पाहिजे.

आणि

(तीन) त्यांनी मूळ विभागाकडे परत जाण्याचा आपला उद्देश आहे अशी कमीत कमी ३ महिन्यांची लेखी नोटीस प्राधिकरणाला/सक्षम प्राधिका—याला दिल्यानंतर त्यांना मूळ विभागाकडे परत येण्याची मुभा राहिल.”

English Translation

“1. *Period of deputation:* The external service shall commence from the date on which the officer hands over the charge of the post in the service of Pradhikaran and such a

service shall end on the date on which the officer assumes the charge of the post of Pradhikaran and the officer concerned shall be posted on an equivalent post.

Initially such an officer/s shall remain on deputation for a period of three years, however.....

(One) *The Pradhikaran reserves the right to recall such an officer at any time before the expiry of the period of deputation if there services are deemed necessary by the Government in the public interest.*

(Two) *If their services are not considered necessary by the external (Foreign) employer, the external employer may refer them back to their original department. However, before such repatriation, the external employer should given 3 months notice to the Pradhikaran/Competent Authority.*

AND

(Three) *Such an officer/s shall be allowed after notifying the Pradhikaran/Competent Authority of his intention of returning to original Department in advance of three months minimum.”*

8. The bare perusal of the aforesaid clauses indicates that normal period of deputation of employee shall be three years subject to sub-Clause Nos.1, 2 and 3. The sub-Clause No.1 reserves right of the parent department to recall employee at any time. The sub-Clause no.2 reserves right of the department who received the employee on deputation to repatriate him to parent department with advance notice of three months to the parent department. Even the employee by giving three months advance notice can seek repatriation to his parent department.

9. The harmonious reading of the aforesaid Clauses would indicate that the employee does not possess absolute right to continue on deputation till end of three years normal tenure. Depending upon administrative exigency of the parent department or the department of deputation, employee can be repatriated to the parent department.

10. The learned Advocate appearing for the Petitioner vehemently submits that sub-Clause No.2 mandates three months advance notice before repatriation of the employee. However, we find that such condition is incorporated for convenience of the parent department and the department of deputation. It does not postulate any right in favour of the employee. The condition of three months advance notice cannot be interpreted as mandatory. The parent department in its discretion can waive such notice. In the present case, a statement is made across the bar on behalf of Respondent No.2-Maharashtra Jeevan Pradhikaran i.e. parent department of the Petitioner that they have no difficulty to accommodate Petitioner and waive off the notice period of three months as indicated in sub-Clause No.2 of Clause No.1 of deputation order dated 27.08.2021. We have no hesitation to hold that the Petitioner had no vested right to remain on deputation nor he suffered infringement of such right for want of three months advance notice to parent department before his repatriation.

11. Although submission is made that impugned order is stigmatic, we are not inclined to accept the same. True that impugned order refers some contents of Resolution passed by the Zilla Parishad and communication made by the President, plain reading of impugned order merely suggests that Petitioner is repatriated in the interest of administration with a view to avoid wrath of the members of Zilla Parishad. As observed by Supreme Court in case of *Union of India vs Janardhan Debanath, (2004) SCC 245*, a transfer of employee would amount to a punishment if such order has entailed penal consequences. Deputation does not mean transfer. It is not the case of Petitioner

before us that by reason of the impugned order, he has been asked to discharge duty on a post lower than presently held or downgraded his pay or his promotional prospects are affected. On the contrary, impugned order appears to have been issued to avoid further conflict between the Petitioner and elected members of Zilla Parishad and ensure smooth administration. Even it is not demonstrated before us that impugned order is stigmatic and that will carry an indelible stain for the rest of his service career without there being any finding of guilt recorded against him.

12. We are therefore inclined to observe that the contents of the impugned communication shall not be read as adverse remarks against the Petitioner, since those are in the form of opinion expressed by President of Zilla Parishad and its members, formulated without offering any opportunity to Petitioner for tendering his explanation.

13. At this stage Mr. Chaware, learned Advocate appearing for the Petitioner submits that the Petitioner has been unilaterally relieved by Respondent No.3-Zilla Parishad, Nandurbar and his 'Digital Signature' (DSC) has been misused for releasing various payments using his ID.

14. In response to the aforesaid submissions, Mr. Pravin Patil, learned Advocate for Respondent No.3 has placed before us a communication dated 15.02.2024 addressed to him by Executive Engineer. It is clarified that from the date of relieving Petitioner, all the payments have been released from DSC of Mr. Shekhar Marathe, In-charge Executive Engineer and none of the payment is made using Digital Signature of the Petitioner, however, because of technical reasons, the messages are sent from online

system on mobile number of the Petitioner. A copy of the statement showing various payments made during the period from 25.01.2024 to 15.02.2024 is placed before us. We find that explanation tendered on behalf of Respondent No.3-Zilla Parishad, Nandurbar is acceptable.

15. In that view of the matter, we do not find any merit in the Writ Petition. Hence, **Writ Petition stands dismissed.**

16. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE