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

WRIT PETITION NO. 8612 OF 2013

Jairaj s/o Vithalrao Kawar,
Age : 48 years, Occ : Service,
R/o Ambika Colony,
Somnathpur Road, Udgir,
Tq.Udgir, Dist.Latur.

..PETITIONER

-VERSUS-

- 1 The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad.
- 2 The Chief Executive Officer,
Zilla Parishad, Latur.
- 3 The Special Enquiry Officer,
Zilla Parishad, Latur.

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Mr.Rodge Pratap G., Advocate for the Petitioner.
Mrs.V.A.Shinde, AGP, for the Respondent No.1.
Mr.Manale Satish S., Advocate for Respondent Nos.2 & 3.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th June, 2015

Oral Judgment:

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

2 The Petitioner seeks to challenge the order passed by Respondent No.2 dated 07.02.2011 and the order delivered by Respondent No.1 dated 06.11.2012 in Appeal No.29/2012.

3 I have heard Mr.Rodge, learned Advocate for the Petitioner, the learned AGP on behalf of Respondent No.1 and Mr.Manale, learned Advocate for Respondent Nos.2 and 3.

4 It is not in dispute that the Petitioner was absent from 17.08.2004 till 09.09.2007. He has produced a medical certificate dated 09.09.2007 issued by the doctor (Acupuncture) who is said to have treated the Petitioner in his Acupuncture Clinic. In the same certificate, the doctor has declared the Petitioner physically fit for reporting for duties from 10.09.2007.

5 The enquiry was conducted against the Petitioner by issuing him the charge sheet cum show cause notice dated 04.09.2007. After he received the said charge sheet, the medical certificate dated 09.09.2007 is submitted to the Respondent/ Management. The Petitioner has admitted that he was absent without submitting any leave application to the Employer. The findings of the Enquiry Officer dated 13.03.2009 indicate that the Petitioner admitted of having not submitted leave applications

from time to time so as to get his leave sanctioned.

6 Needless to state, after issuance of the charge sheet, the Petitioner has reported for duties with the said medical certificate dated 09.09.2007.

7 Considering the above stated fact situation, Respondent No.2 as a disciplinary authority has passed an order on 07.02.2011. The punishment awarded is, reduction of the Petitioner's salary down to the basic salary. Appeal No.29/2012 was preferred by the Petitioner for challenging the order dated 07.02.2011. By a detailed judgment dated 06.11.2012 impugned in this petition, Respondent No.1 has partly allowed the Appeal considering Rule 21 of the Maharashtra Zilla Parishad District Services (Discipline & Appeal) Rules, 1964 and quashed and set aside the order passed by Respondent No.2 dated 07.02.2011. As such, the Petitioner was treated leniently and was awarded punishment of permanent stoppage of two increments.

8 Though the Petitioner has tried to canvass a host of factors, the material aspect is as to whether, the quantum of punishment awarded to the Petitioner by the judgment of Respondent No.1 dated 06.11.2012 could be said to be commensurate to the gravity and seriousness of the

misconduct.

9 The Petitioner has been unauthorizedly absent from 17.08.2004 till 09.09.2007. The conclusion that he is unauthorizedly absent is to be drawn in the light of the fact that he had never applied for obtaining leave and he was not permitted to proceed on medical leave.

10 As recorded above, after the charge sheet was issued on 04.09.2007, he has produced a certificate from the Acupuncture Clinic certifying him to be under treatment of a doctor from 17.08.2004 till 09.09.2007 due to cervical spondylitis, severe pain in neck and back, pain in left hand, giddiness and dizziness, severe weakness and loss of power. It was also certified that he has now recovered and improved and is physically fit for joining duties on 10.09.2007.

11 As stated above, the aspect is of unauthorized absenteeism. The Petitioner has apparently remained absent without leave. On account of the impugned order dated 06.11.2012, Respondent No.1 has treated him leniently and interfered with the punishment awarded by Respondent No.2 vide order dated 07.02.2011. I do not find that the punishment so awarded by virtue of the order dated 06.11.2012 could be said to be shockingly disproportionate to the gravity and seriousness of the

misconduct.

12 Mr.Manale submits that the Petitioner has once again started remaining unauthorizedly absent from 2011 and since then, he has not reported for duties. The disciplinary proceedings have been initiated against him.

13 Mr.Rodge disputes the said statement.

14 Needless to state, this Court is not required to go into this aspect as Respondent No.2 in it's capacity of being the Employer, is at liberty to take recourse to the appropriate provisions of law in the event any disciplinary proceedings is contemplated or initiated.

15 In the light of the above, this Writ Petition sans merit and is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)