

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2779 OF 2015

Phulaji Honaji Jogdand,
Age 45 Years, Occ. Service,
R/o Karadgaon, Tq. Ghansawangi,
District Jalna.

..Petitioner

Versus

1. The State of Maharashtra
(Additional Divisional Commissioner,
Aurangabad Division, Aurangabad)

2. Additional Divisional Commissioner,
Aurangabad Division, Aurangabad

3. The Chief Executive Officer,
Zilla Parishad, Jalna.

..Respondents

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Advocate for Petitioners : Shri Irale Patil D.R.

AGP for Respondents 1 & 2 : Shri Badakh V.S.

Advocate for Respondent 3 : Shri Kulkarni Bhushan B.

Advocate for Respondent 4 : Shri Deshmukh R.T. h/f Shri Sable B.R.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: January 06, 2016

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the orders dated 7.3.2011 passed by respondent No.3 - Zilla Parishad and dated 2.5.2012 passed by respondent No.2, Appellate authority.

5. The petitioner was charge sheeted vide a charge sheet, wherein, six charges were levelled upon him. A departmental enquiry was conducted against the petitioner pursuant to the said charge sheet.

6. By the report of the Enquiry Officer dated 6.10.2010, the petitioner was held guilty of the all charges levelled against him. By a final show cause notice, dated 20.10.2010, the petitioner was called upon to explain as to why he should not be punished for the mis-conducts proved against him. Copy of the Enquiry Officer's report was also supplied him.

7. The petitioner submitted his reply dated 30.10.2010. Shri Irale Patil, learned Advocate for the petitioner submits that he denied all the charges and explained to the respondent No.3 - employer that he should be exonerated of the charges. He had also prayed for awarding a lighter punishment in the event the employer is not satisfied with his reply.

8. He further submits that by the impugned order of punishment dated 7.3.2011, the petitioner has been awarded the punishment of reduction of salary to the basic scale that he earned as per Rule 4 of the Maharashtra Zilla Parishad Services (Discipline and Appeal) Rules, 1964 ("1964 Rules"). Contention is that all the major charges held to be proved against the

petitioner by the Enquiry Officer have been given up by the establishment. For unspecified reasons, he has been awarded the punishment by the impugned order.

9. He further submits that he preferred an Appeal No. 55 of 2011 before respondent No.2 under Rules 13 and 14 of the 1964 Rules. By the impugned order dated 2.5.2012, his appeal has been rejected on the ground that the punishment awarded is appropriate and commensurate. He submits that the import and meaning of the impugned order of punishment, dated 7.3.2011, would indicate that he has been punished only for utilizing the School premises as an accommodation from September 2008 till 12.1.2009 as he continued to receive the house rent allowance. It is, therefore, prayed that the impugned order be set aside as the charge held to be proved against him is of a minor nature.

10. Shri Kulkarni, learned Advocate appearing on behalf of respondent Nos.1 to 3 has strenuously supported the impugned orders. Submission is that a proper departmental enquiry was conducted. Fair opportunity of hearing was given to the petitioner. His explanation to the second show cause notice appears to have been accepted in part, since the recovery of Rs. 3,60,775/- is not reflected in the order dated 7.3.2011.

11. He places reliance upon the affidavit in reply filed by respondent No.3, dated 26.10.2015, wherein, it is contended that though the charge of mis-appropriation has not been given up, it is partially accepted that the

amount of Rs.3,75,399/- is not to be recovered from the petitioner. The amount of Rs.15,306/- is an amount mis-appropriated, same has been deposited by the petitioner in the Government account and hence he is punished.

12. I have considered the submissions of the learned Advocates of the respective sides, as have been recorded herein above.

13. It is trite law that an order of punishment has to be a speaking and well reasoned order. It ought not to reflect a predetermined view of an employer. I do not find any discussion in the impugned order of punishment, which could reflect the contents of paragraph No.1 of the affidavit-in-reply dated 26.10.2015 filed by respondent No.3. For the sake of clarity, the said paragraph No.1, reads as under:-

“ That, in response to order dated 19.8.2015 passed by this Hon'ble High Court, I say and submit that, the charge of misappropriation and recovery of Rs.3,90,705/- with interest has been factually not given. I further say that, the order dated 7.3.2011 passed by Chief Executive officer, Zilla Parishad, Jalna is rational. Out of misappropriated recoverable amount of 3,90,705/- it is partially admitted that, the evidence to the extent of the amount of Rs.3,75,399/- are accepted by the authority. However, amount of Rs.15,306/- is fixed as a amount of misappropriation which is deposited by concern on 30.9.2011 with Government account, by which it is established that, the petitioner has accepted he irregularities / misappropriation, therefore, the petitioner is punished as per Rule 4(04) of Maharashtra Zilla Parishad Service

(Discipline and Appeal) Rules, 1964.”

14. I am unable to reconcile the statements made by respondent No.3 in the above reproduced paragraph with the impugned order of punishment. In fact, the order of punishment neither mentions as to whether the petitioner has been exonerated of certain charges while accepting his submission to the extent of recovery of Rs.3,75,399/-, nor do I find any reason assigned as to why the petitioner has been awarded the punishment of reduction of salary to the basic pay.

15. The respondent / establishment was under an obligation to pass a reasoned order stating therein as to whether the explanation of the petitioner is being accepted in relation to some charges and as to why he is being awarded the punishment in relation to such charges that are held to be proved and the explanation of the petitioner to that extent is not satisfactory. In the absence of a reasoned order, the impugned order of punishment cannot be sustained. Respondent No.2 - appellate authority has apparently lost sight of this fact and has dismissed the appeal of the petitioner, without considering that the impugned order of punishment is silent as to the reasons for awarding the punishment to the petitioner.

16. In the light of the above, this petition is partly allowed. The impugned order of punishment dated 7.3.2011 and the order of respondent No.2 dated 2.5.2012 are quashed and set aside. Respondent No.3 shall, therefore, be at liberty to consider the contents of the second show cause

notice dated 20.10.2010 and the reply of the petitioner dated 30.10.2010 and pass a reasoned order, which would disclose as to whether the explanation of the petitioner is accepted and he is exonerated of any charge as well as the reason for awarding him any punishment. Respondent No.3 shall, accordingly, pass such an order within four weeks from today. Needless to state, respondent No.3 shall also decide as to whether the period of suspension of the petitioner, pending disciplinary proceedings is being merged with the final order or not.

17. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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