

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

WRIT PETITION NO. 5215 OF 2005

Anil S/o Shahadrao Tribhuvan,
Age : 37 Years, Occu. : Service,
R/o Government Quarter, 'Varsha'
Type - 3/04 Near Minor Irrigation
Office, Mahabal Road, Jalgaon -
Phone No. 0257/2263733.

.. Petitioner

Versus

1. The Chief Executive Officer,
Zilla Parishad, Jalgaon.
2. Himmatrao S/o Shamrao Pawar,
Around Age : 52 Years, Occu. :
Service as Office Supdt.,
Social Welfare Department,
Zilla Parishad, Jalgaon.
R/o Department of Social Welfare,
Zilla Parishad, Jalgaon,
Dist. Jalgaon.
3. The Additional Commissioner,
Nasik Division, Nasik,
At Office of Divisional Commissioner
for Nasik, at Nasik Road,
Dist. Nasik.
4. The State of Maharashtra,
through the Secretary, Social Welfare
and Social Justice, Sports & Cultural
Affairs Department, Mantralaya,
Mumbai-32.

5. Social Welfare Officer, Group 'A',
Z. P. Jalgaon. .. Respondents

Shri A. R. Rathod, Advocate for the Petitioner.

Shri N. S. Choudhary, Advocate for Respondent Nos. 1, 2 and 5.

Ms. Vaishali N. Patil, A.G.P. for Respondent Nos. 3 and 4.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 18TH NOVEMBER, 2016.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The minor penalty imposed upon the petitioner is assailed. Mr. Rathod, the learned counsel states that, the petitioner was working as arts teacher and was given additional charge as superintendent of the physically handicapped school. One student on 30.12.2001 and two students on 01.01.2002 had ran away from the hostel. The said fact was communicated by the petitioner under letter dated 03.01.2002. The learned counsel further submits that, without conducting any departmental enquiry and without following any procedure a notice was issued to the petitioner calling for explanation. Said notice itself states that, if the explanation is not received, then an enquiry would be commenced. Without conducting any enquiry penalty is imposed upon the petitioner of stoppage of increment. The appellate authority without assigning any reasons has dismissed the appeal. The learned counsel for the petitioner further submits that, there is no compound wall and safety measures around the

hostel as per the norms/requirement for the physically handicapped children hostel. All these aspects are not considered.

2. Mr. Choudhari, the learned counsel for respondent Nos. 1, 2 and 5 submits that, while imposing minor punishment it is not necessary to undergo rigors of departmental enquiry. As per Rule 7 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 procedure is prescribed for imposing minor penalty and same has been scrupulously followed. Show cause notice was issued. Explanation was called. Said explanation was considered and thereafter petitioner was found guilty of the negligence. Therefore, minor penalty was imposed.

3. We have also heard the learned Assistant Government Pleader for respondents/State.

4. Upon considering the submissions canvassed by the learned counsel for respective parties, it is manifest that, departmental enquiry was never conducted, though in the show cause notice issued to the petitioner, it was stated that, if the explanation is not received from the petitioner, then departmental enquiry would be commenced and the documents would be supplied to the petitioner. Without adhering to the said

procedure directly punishment is imposed upon the petitioner. The departmental enquiry was initiated against other employees and in the said departmental enquiry on the basis of their statement, the notice was issued to the petitioner. It was expected that, the respondents would have abided by their own show cause notice in which they had proposed to conduct departmental enquiry. The petitioner was apprised that the departmental enquiry would be commenced. However, without conducting the departmental enquiry action is taken. It was required to be considered that, the petitioner was holding additional charge and was not holding full fledged charge of the post.

5. This Court at the time of admitting the writ petition had stayed the impugned penalty.

6. Considering the aforesaid conspectus of the matter, the impugned orders are quashed and set aside. Rule is made absolute in terms of prayer clause "B". No costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]