

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

WRIT PETITION NO.5294 OF 2015

Yadav s/o Baliram Pawar,
Age : 49 years, Occupation : Service,
R/o Zilla Parishad Primary School,
Sangvi (Bk), Vajirabad C.P.S.,
Nanded, Tq. & Dist.Nanded.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32.
- 2 The Additional Commissioner,
Divisional Commissioner Office,
Aurangabad.
- 3 The Chief Executive Officer,
Zilla Parishad, Nanded.
- 4 The Education Officer (Primary),
Zilla Parishad, Nanded.

...RESPONDENTS

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Advocate for Petitioner : Shri Shinde Dhananjay M.
AGP for Respondents 1 and 2 : Shri S.W.Munde.
Advocate for Respondents 3 and 4 : Shri N.S.Kadam.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th August, 2016

Oral Judgment :

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

2 The Petitioner is aggrieved by the order dated 02.07.2011
passed by Respondent No.3, by which he has been awarded punishment of
permanent stoppage of one increment. The Petitioner is also aggrieved by
the order dated 06.12.2013 passed by Respondent No.2/ Additional
Commissioner, Aurangabad by which the order of Respondent No.3 has
been sustained and the punishment is confirmed.

3 I have heard Shri Shinde, learned Advocate for the Petitioner,
Shri Munde, learned AGP for Respondent Nos.1 and 2 and Shri Kadam,
learned Advocate for Respondent Nos.3 and 4, at length.

4 The issue is as regards the conclusions arrived at by the
Enquiry Officer and the order dated 02.07.2011 passed by Respondent
No.3 and the order dated 06.12.2013 passed by Respondent No.2.

5 After considering the submissions of the learned Advocates, I
find that the whole issue turns upon the findings of the Enquiry Officer.
Three charges have been levelled upon the Petitioner. The first charge is
that proper information about the tenure of services put in by the various

employees at various Talukas at the time of annual transfers in 2007, was not submitted by the Petitioner. The second charge was that there has been irregularity in purchase of computers in the schools. The third charge is with regard to the causing of interpolations in the school admission register of students.

6 Normally, this Court is not required to consider the evidence recorded before the Enquiry Officer and his conclusions, threadbare. However, after hearing the learned Advocates for the respective sides, I found that two amongst three charges are not at all proved against the Petitioner. The Enquiry Officer has also come to the conclusion that the said two charges are not proved, yet it is held that the said charges are partly proved. It is in this backdrop that I have considered the submissions of the learned Advocates in the light of the record available.

7 Insofar as the first charge is concerned, the Petitioner has submitted exact information about the Assistant Teachers of the school at Ardhapur and especially with regard to Assistant Teacher Smt.Shehanaj Parveen. The grievance of the Zilla Parishad is that the tenure of Smt.Shehanaj Parveen at the old and new talukas together was 19 years and six months and the Petitioner falsely submitted the information of 06 years and 08 months.

8 By letter dated 07.06.2007, the Petitioner had submitted the information to the Education Officer, Zilla Parishad, Nanded. In my view, the Petitioner had in fact given exact information with regard to service put in by Smt.Shehanaj Parveen taluka-wise in number of years and number of months. Specific information was submitted and the total of the period spent by Smt.Shehanaj Parveen in the concerned old and new talukas together, was indeed 19 years and 06 months. I do not find even an iota of truth in the charge as specific information was submitted by the Petitioner. It is only that the Education Officer did not prepare the total of number of years spent by the Assistant Teacher and therefore, it is alleged that wrong information was given by the Petitioner. This charge is, therefore, not proved.

9 Insofar as the third charge of causing interpolations in the school admission register/ extract is concerned, the concerned page with regard to Mohammad Saleem Mohammad Khaja was admittedly a very old document and had got torn due to passage of time. When bits and pieces of the said page were put together, the name of Mohammad Saleem Mohammad Khaja and his caste as “Muslim Khatik” clearly appeared. There is no evidence of interpolation caused, inasmuch as the Enquiry Officer has also not come to the conclusion that the Petitioner has scored

out any information or introduced new information or caused interpolation. This charge is also not proved.

10 However, with regard to the second charge of not purchasing the approved computers is concerned, though the Petitioner placed the order for purchasing three computers with such agency which was approved, the Petitioner did not insist that the computers must bear the ISO mark which was the mandate in view of the Government Resolution. The Government required the computers with ISO mark as that is a standardization bench mark and no person can be permitted to deviate from the same. The said charge of irregularity is, therefore, proved.

11 The punishment awarded to the Petitioner is stoppage of one increment permanently. Rule 4 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 prescribes the nature of penalties under the chapter titled “Discipline” below Part-III. The punishment at clauses (iv) to (vii) are major penalties. Withholding of increment or promotion under clause (ii) of Rule 4 is considered to be a minor penalty. When the Government mandated that the computers to be purchased were to carry the ISO mark which is bench mark of quality, the Petitioner ought not to have ventured to purchase the computers without ISO mark.

12 Considering the misconduct proved, I do not find the punishment awarded to the Petitioner could be said to be shockingly disproportionate to the gravity and seriousness of the misconduct. It is trite law that the Court can interfere with the punishment only if it is shockingly disproportionate. Merely because it may appear to be disproportionate, would not warrant an interference.

13 In the light of the above, this Writ Petition is partly allowed by exonerating the Petitioner from the first and the third charges. The punishment awarded with regard to the second charge, which is proved, is maintained. The Respondent/ Employer, if required, shall make an entry in the service book of the Petitioner with regard to the conclusion arrived at by this Court.

14 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)