

- 1 -

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

**BENCH AT AURANGABAD**

**WRIT PETITION NO.11998/2015**

Alka d/o Dashrath Pawar,  
Age : 33 years, Occ. Service,  
R/o. Q-6/5, Ramnagar, N-2, CIDCO,  
Aurangabad.

...Petitioner...

**Versus**

- 1 The Additional Divisional  
Commissioner, Aurangabad.
- 2 The Chief Executive Officer,  
Zilla Parishad, Aurangabad.

...Respondents...

.....

Shri P.B. Salunke, Advocate for the petitioner.  
Shri D.R. Korde, AGP for respondent no.1.  
Shri A.R. Salve, Advocate for respondent no.2 (Absent).

.....

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE: 15.03.2016**

**ORAL JUDGMENT :**

1] The petitioner is aggrieved by the impugned order dated 30.12.2015 passed by respondent no.1 by which his Appeal No.102/2011 has been dismissed.

- 2 -

2] Shri Salunke, learned Advocate for the petitioner, has strenuously contended that the charge leveled upon him was with regard to a change effected in the caste column of the admission register. Respondent no.2 - Zilla Parishad initiated a domestic enquiry against the petitioner. She was placed under suspension.

3] He further submits that after the enquiry was concluded on 3.12.2007, the enquiry report dated 3.12.2007 was submitted wherein the petitioner has been exonerated of the first two charges on the ground that the petitioner has not caused any interpolation in the admission register and had not effected any change in the caste of a candidate, under the caste column. One Mr.Tarav, maintaining the admission register, was held responsible for effecting such changes.

4] Shri Salunke further strenuously submits that though the Enquiry Officer has held him partly guilty of two charges, they are of minor character and the punishment of stoppage of one annual increment permanently amounts to a disproportionate punishment.

5] He further submits that though the enquiry concluded on 3.12.2007, her suspension was continued till

- 3 -

13.8.2008. During her entire period of suspension, she was paid only 50% of her salary as subsistence allowance. After three months of suspension, the said allowance should have been enhanced to the maximum of 75% in the light of Rule 68 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, (hereinafter referred to as the 1981 Rules).

6] He further submits that her representation dated 25.9.2008 for payment of subsistence allowance under Rule 68 is still pending with respondent no.2 and the same is undecided. Shri Salunke then submits that the order of punishment may be set aside and in the event this Court is not inclined to interfere with the said punishment, the stoppage of one annual increment permanently be reduced to a stoppage for one year.

7] The learned AGP appearing on behalf of respondent no.1 has strenuously supported the impugned judgment. He submits that the charges proved against the petitioner can be seen from the Enquiry Officer's report. Though she has not been held guilty of causing interpolations or manipulation with regard to the

- 4 -

admission register, she has been held guilty of the other charges, which cannot be said to be of a minor character.

8] Respondent no.2 – Zilla Parishad has been served and has caused appearance through an Advocate. None appeared for respondent no.2 on 19.1.2016. Adjournment was sought on 9.2.2016 by respondent no.2 and again a similar adjournment was sought by him on 2.3.2016. Nobody has appeared for respondent no.2 today.

9] I have considered the submissions of the learned Advocate for the petitioner and the learned AGP.

10] Respondent no.1 has considered the appeal of the petitioner. All her contentions were considered in the light of the Enquiry Officer's report and the evidence available. By the impugned judgment, respondent no.1 has dismissed the appeal on the ground that the punishment is commensurate to the seriousness and the gravity of the mis-conducts proved against the petitioner.

11] It is trite law that merely because a punishment may appear to be disproportionate, would not be a ground for the Court to interfere in such a punishment. The punishment must be shockingly disproportionate, in a sense that no prudent disciplinary authority would have

- 5 -

awarded such a punishment considering the gravity and seriousness of the mis-conducts. This Court, in the matter of *Shivaji Daulat Dadar v. Divisional Controller, MSRTC, Ahmednagar Division* (2016 (2) Mh.L.J., 87) (March issue), has concluded that unless the punishment is shockingly disproportionate, no interference can be caused.

12] I have considered the Enquiry Officer's report in the light of the submissions of the petitioner. The oral and documentary evidence on record indicates that the petitioner had issued the certified copies of the concerned documents from the admission register in favour of a person whose caste was interpolated in the attendance register. Had the petitioner been diligent and cautious, she would have looked into the interpolation before approval. I, therefore, find that the conclusions drawn by the Enquiry Officer do not deserve to be interfered with.

13] The punishment awarded to the petitioner is stoppage of one annual increment permanently. I find no reason to cause any interference in the said punishment. This petition to that extent, therefore, fails.

- 6 -

14] The petitioner has made a grievance as regards payment of subsistence allowance only at the rate of 50% during her entire tenure of suspension. Reliance has been placed on Rule 68 for the said purpose. A representation dated 25.9.2008 is pending before respondent no.2 wherein the petitioner has raised an issue of violation of Rule 68(1)(a)(i) and (ii). Said issue was not before respondent no.1 for adjudication since the entire enquiry proceedings will have to be scanned to arrive at a conclusion that the enquiry was not delayed at the best of the petitioner and hence she would be entitled for enhancement in suspension allowance.

15] I am of the view that a direction to respondent no.1 to decide the representation of the petitioner would meet the ends of justice in the light of Rule 68 of the 1981 Rules within a period of three months from today.

16] In the event the petitioner desires to replace the representation dated 25.9.2008 by filing a fresh representation, she may do so. If such a fresh representation is filed, the same shall be decided by

- 7 -

respondent no.2 within three months from the date of its receipt.

17] In the light of the above, this petition fails to the extent of the challenge to the impugned judgment delivered by respondent no.1. Rule is, therefore, discharged. No order as to costs.

**(RAVINDRA V. GHUGE, J.)**