

UNREPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.7961 OF 2016**

Mr.Datta S/o Vishwanath Mulay,
Age 56 years, Occ.Nil,
R/o Sudarshan Colony, Behind
Government ITI,MIDC Area,
Near Railway Station Road,
Auragnabad, Dist.Aurangabad. ... Petitioner.

Versus

1. The Maharashtra Centre for
Entrepreneurship Development
through its Chairman/Executive
Committee, Krupanidhi Building,
Balard Estate, Mumbai.

2. The Executive Director,
The Maharashtra Centre for
Entrepreneurship Development
MIDC, Near Railway Station,
Aurangabad, Dist.Aurangabad. ... Respondents.

...

Mr.V.D.Sapkal, advocate for the petitioner.
Mr.A.P.Basarkar, A.G.P. for the State.
Mr.S.S.Chapalgaonkar, advocate for Respondent
No.1.

...

**CORAM : S.V.GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

Date : 17.04.2017.

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

1. Heard.

2. Leave to amend. Amendment be carried out forthwith.

3. Rule. Rule returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

4. The petitioner initially had assailed the order dated 9.3.2012, issued by the Respondent No.2, thereby terminating him. The appeal filed against the said order came to be dismissed. The petitioner thereafter approached the Governing Council. The Governing Council modified the punishment and demoted the petitioner. Aggrieved thereby, the present Writ Petition is filed.

5. During the pendency of the present Writ Petition, the Governing Council has further modified the punishment in its meeting dated 13.4.2017, thereby has agreed to reinstate the

petitioner on his original post and has imposed minor punishment of stoppage of two increments. So also has taken a decision not to give back wages from the date of termination till the date of reinstatement. By amendment the same is also assailed.

6. Mr.Sapkal, learned counsel for the petitioner submits that the charges levelled against the petitioner were not serious charges. There were no charges of misappropriation. The charges were about non-adherence of proper procedure. The learned counsel submits that the petitioner was not given proper opportunity nor the inquiry has been conducted in a proper manner. According to the learned counsel, the impugned order is erroneous. The petitioner be reinstated in service with full back wages and also the minor punishment imposed deserves to be set aside.

7. Mr.Chapalgaonkar, learned counsel submits that out of seven charges three charges are proved and one charge is partially proved.

The Governing Council has taken a lenient view and has modified the punishment. Minor punishment is imposed of stoppage of two increments. On the basis of principle of "no work no pay" the petitioner would not be entitled for back wages. Moreover, the petitioner has approached this Court belatedly. The appeal has been dismissed in 2013 and the petition is filed in the year 2016. The petitioner can not take advantage of his own wrong.

8. We have considered the submissions canvassed by the learned counsel for respective parties.

9. After conclusion of the departmental proceedings, the punishment is imposed upon the petitioner. Three charges are said to have been proved and one charge is partially proved.

10. Upon perusal of the charges, it appears that the charges against the petitioner were not with regard to any misappropriation but were with regard to non-observance of proper procedure,

non-communication.

11. This Court in exercise of its writ jurisdiction would not sit as an appellate authority over the evidence appreciated by the Inquiry Officer, so also the decision taken and confirmed in appeal.

12. It would appear that the Governing Council itself came to the conclusion that initial punishment imposed upon the petitioner is harsh and is disproportionate. As such has modified the major penalty imposed upon the petitioner and awarded minor penalty of stoppage of two increments. The said punishment can not be said to be disproportionate.

13. As far as back wages are concerned, it would appear that the petitioner was initially dismissed from service on 9.3.2012. Thereafter, his appeal also came to be dismissed in 2013. The Governing Council in 61st meeting took a decision to modify the punishment of dismissal from service to reversion of the petitioner to lower

post. The said decision it appears is taken in the year 2016, thereby the Governing Council was convinced that punishment imposed is disproportionate to the charges levelled and proved against the petitioner and now subsequently has again modified the said punishment by imposing minor penalty of stoppage of two increments.

14. The punishment is already imposed upon the petitioner of stoppage of two increments, we are not inclined to interfere with the said punishment. Considering that the Governing Council itself has twice modified the punishment imposed upon the petitioner, it was not fault of the petitioner for not having worked, we are inclined to award 50% back wages to the petitioner from the date of termination till today. The petitioner is at liberty to join his original post immediately.

15. The Respondent shall pay 50% back wages to the petitioner as directed preferably within three (3) months. Though we have not awarded

total back wages, however, the period from termination of service of the petitioner till reinstatement shall be counted for the purpose of continuity and all other consequential benefits.

16. Rule accordingly made absolute in above terms. No costs.

(SANGITRAO S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

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