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

WRIT PETITION NO. 9055 OF 2016

**MANGALA REVAJI SONAWANE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Advocate for Petitioner : Wagh Vishwas B.
AGP for Respondents: Mr.S.B.Pulkundwar**

CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL,JJ.**

DATE : 08/09/2017

PER COURT :-

Mr.Wagh, learned Counsel for petitioner vehemently contends that the respondents have acted in highhanded manner. While conducting departmental enquiry, they violated the principles of *audi alteram partem*. The charges framed against the petitioner of unauthorized absentism, were erroneous, so also it was erroneous on the part of the authorities, to contend that the petitioner has brought in political pressure. Both the charges are based on hypothetical assumption without there being any proof of the same. The learned counsel submits that the Tribunal has also failed to consider the real dispute. The Tribunal ought to have considered that there was no evidence against the applicant-petitioner to hold that both the charges are proved. As far as charge of leave is

concerned, the petitioner has placed on record the leave application alongwith medical certificate in support of her claim. After the petitioner was declared medically fit by Civil Surgeon, Ahmednagar on 27/06/2007, the petitioner could report for the duty. Till then, the petitioner was taking treatment for Lumber Spondylitis in private hospital at Shirur, Pune. The Enquiry officer, disciplinary authority and the Tribunal ignored the documents submitted by petitioner, while concluding the charge of absentism against the petitioner. The learned counsel submits that mere presence of letters from the MLA/Minister, would not efso-facto prove that the petitioner has brought political pressure on the respondents. There is nothing on record to hold that the Minister/MLA had given recommendation letters at the behest of the petitioner.

2] The learned AGP supports the order.

3] We have considered arguments, the orders passed by the authorities and the judgment of the tribunal. It has been observed by the Tribunal that the Enquiry Officer, upon conclusion of the enquiry, has in his report stated that the applicant on her transfer by order dated 21/6/2005 to Jalgaon reported on duty on 8/7/2005. The petitioner took head quarter leave on 9/7/2005 and 10/7/2005 and proceeded on leave on 11/7/2005. Petitioner submitted an

application on 12/7/2005 that she was not well and may be granted leave on medical ground. In the said application, period of leave was not mentioned nor any medical certificate enclosed. On 21/7/2005, the Assistant Commissioner, Jalgaon asked the petitioner to report for duty. The petitioner replied that she was taking treatment in Government Hospital at Ahmednagar. The petitioner did not submit any application in the prescribed form nor any medical certificate showing that she was taking treatment at Government Hospital Ahmednagar. The petitioner was placed under suspension on 18/5/2007. Only after that on 28/6/2007 petitioner submitted leave application in the prescribed form and submitted fitness certificate from Civil Surgeon, Ahmednagar. It is further observed by the enquiry officer also that the case papers dated 10/1/06, 17/1/06, 7/2/06, 14/2/06, 25/2/06, 8/3/06, 17/4/06, 24/4/06 and 2/5/06 submitted by petitioner were blank and no details of treatment or medicines were written on these case papers. This shows that the petitioner was not admitted in any Government hospital or she took treatment in Government Hospital. The certificate from the Civil Surgeon also does not disclose the duration for which the petitioner was suffering. The petitioner submitted a certificate from Accident Hospital, Shirur, Dist.Pune dated 31/1/2006 stating that she was under treatment from 11/7/2005 to 11/5/2006 for Lumber spondylitis. This certificate is counter signed by Civil Surgeon, Ahmednagar. The

certificate dated 26/6/2007 is regarding outdoor treatment. It was observed that the document submitted by the petitioner did not inspire confidence, nor any medical certificate was submitted till she was placed under suspension. The petitioner was absent for almost two years unauthorizedly till the departmental enquiry was initiated. The charge no.2 is also proved. The petitioner got letters written from the Minister and the MLA to the respondents regarding her transfer to Jalgoan. It is only at the behest of the petitioner, such letters recommending cancellation of transfer could have been written by Minister/MLA.

4] The learned counsel for the petitioner relies on the judgment of the Apex Court in the case of Sukhdeo V/s Commissioner, Amravati Division, Amravati and another reported in (1996) 5 SCC 103, to substantiate his contention that entire record is required to be considered while compulsorily retiring the employee and considering public interest.

5] The judgment in the case of Sukhdeo (supra) would be of no avail to the petitioner and in the present case, charges against the petitioner have been proved.

6] All the authorities and the Tribunal have found that there was

enough material to prove charges no.1 and 2.

7] Considering the above, no case for interference in writ jurisdiction is made out. Writ Petition is dismissed. No costs.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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