

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9346/2016

Rajendra s/o Shriram Bhujbal,
age 33 yrs., occu.nil
r/o Shelsur Tq.Chikhli
Dist.Buldhana.

...Petitioner...

Versus

- 1] The State of Maharashtra,
through the Secretary to the
Village Development, Bandhkam
Bhavan Building, Ground Floor,
25-Marzban Road, Fort,
Mumbai-400 001.
- 2] The Chief Executive Officer,
Zilla Parishad, Jalna. Dist.Jalna.
- 3] The Block Education Officer,
Panchayat Samiti, Bhokardan.
Dist.Jalna.
- 4] The Head Master,
Zilla Parishad Primary School,
Lonkarwadi Tq.Bhokardan
Dist.Jalna.

...Respondents...

.....

Shri Swapnil D. Tawshikar, Advocate for petitioner.
Smt.M.A. Deshpande, AGP for respondent no.1.
Shri Vaibhav Deshmukh, Advocate for respondent nos.2 to
4.

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- 2 -

**CORAM: SHANTANU S. KEMKAR &
N.W. SAMBRE, JJ.**

DATE: 09.08.2017

ORAL JUDGMENT (Per Shantanu S. Kemkar, J.):

1] Heard learned counsel for the parties. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, the petition is taken up for final disposal.

2] The petitioner was appointed on the post of Shikshan Sevak vide order dated 12.7.2010 (Exhibit A) issued by the Chief Executive Officer, Zilla Parishad, Jalna.

3] The Chief Executive Officer, Zilla Parishad, Jalna exercising his powers under Section 95 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (for short "the Act of 1961") read with Rule 3 of the Maharashtra Zilla Parishads District Services (Conduct) Rules, 1967 (for short, the Rules of 1967), and Rule 3 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 (for short, the Rules of 1964), terminated the petitioner's services vide order dated 24.7.2013 (Exhibit B) on the ground

- 3 -

that an offence u/s 306, 304-B, 498-A, 323 r/w 34 of the Indian Penal Code has been registered against him and for that, he was taken in custody and remained in custody from 19.2.2013 to 12.4.2013. Feeling aggrieved by the said termination order, the petitioner has filed this petition.

4] According to the petitioner, before passing the impugned stigmatic termination order, no show cause notice, no opportunity of hearing and no departmental enquiry was held and as such the impugned order is violative of Rule 6 of the Rules of 1964. It is also the case of the petitioner that reliance of the respondents on Condition No.3 of the order of appointment is misconceived as the alleged offences mentioned in the impugned termination order do not come within the purview of mis-behaviour or mis-conduct committed by the petitioner during the course of his employment. In the circumstances, according to the petitioner, the impugned order, being *ex-facie* illegal, the same is liable to be set aside.

5] On the other hand, the learned counsel for the respondent nos.2 to 4 has justified the impugned order

- 4 -

and has stated that since the criminal case was registered against the petitioner, for which he was arrested and remained in custody from 19.2.2013 to 12.4.2013, his services have rightly been terminated.

6] We have considered the rival contentions and have gone through the pleadings.

7] Rule 3 of the Rules of 1967 provides that every Parishad servant shall at all times maintain absolute integrity and devotion to duty. Rule 3 of the Rules of 1964 deals with suspension of servant of the Zilla Parishad. It is not in dispute that the alleged criminal case was unconnected with the petitioner's duty. The alleged offences were not committed during the course of his employment. In the circumstances, invocation of the powers under Rule 3 of the Rules, 1967, appears to be wholly misconceived. Similar is the position of invoking powers under Rule 3 of the Rules, 1964. By the impugned order, the petitioner has not been put under suspension, but his services have been terminated.

8] It is clear that before imposition of major penalty of termination / cancellation of appointment, no charge-sheet was issued to the petitioner and no inquiry

- 5 -

was conducted as provided under Rule 6 of the Rules of 1964. In the circumstances, in our considered view, the law laid down by the Division Bench of this Court in the case of *Prakash Khushalrao Dabhade v. Zilla Parishad, Aurangabad & others* reported in **2000 (2) ALL MR 545**, squarely applies to the facts of the present case, in which the Division Bench in paragraph no.14 has held as under:-

"14. Now, it is well settled law that even a temporary Government servant cannot be removed from service without holding departmental enquiry, if the complaint is there regarding misbehaviour or misconduct, and without giving him an opportunity to defend himself as per the rules prescribed for the departmental enquiries."

9] Thus, having not held the departmental enquiry as contemplated under Rule 6 of the Rules of 1964 before imposing the penalty of termination from services of the petitioner, the impugned order passed by the respondent no.2 cannot be sustained. Even otherwise, the reason for the termination cannot be termed as mis-behaviour or misconduct committed during the course of employment.

10] We have also been informed by the learned

- 6 -

counsel for the petitioner that the petitioner has been acquitted in the criminal case in question by the learned Additional Sessions Judge, Jalna, in Sessions Case No.95/2013 vide judgment dated 31.5.2017. In view of this additional fact also, we are of the view that the impugned order is liable to be set aside.

11] In the result, we quash and set aside the impugned order dated 24.7.2013 (Exhibit B) passed by the respondent no.2.

12] The respondents are directed to reinstate the petitioner within a period of two weeks and pay him consequential monetary benefits within a period of six months.

13] Rule is made absolute accordingly.

(N.W. SAMBRE, J.)

(SHANTANU S. KEMKAR, J.)