

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2313 OF 2016

Shrikant Govindrao Kulkarni .. **Petitioner**
Versus
The State of Maharashtra and others.. **Respondents**

Mr. Bhagwan V. Thombre, Advocate for the
Petitioner.

Mr. S. K. Tambe, A.G.P. for Respondent Nos. 1
and 2.

Mr. Santosh B. Pulkundwar, Advocate for Respondent
Nos. 3 and 4.

CORAM: S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.

DATE: 25th September, 2018

PER COURT :

1. The departmental enquiry was instituted against the petitioner. The Enquiry Officer submitted the report holding that partially Charge Nos. 1 and 2 has been proved. Subsequently they imposed punishment of withholding two increments permanently. The petitioner filed an appeal before the Additional Commissioner, Divisional Commissioner Office, Aurangabad (*hereinafter referred to 'Commissioner'*). The Commissioner

dismissed the appeal.

2. Mr. Thombre, learned counsel for the petitioner submits that during the period the petitioner is shown as unauthorisedly absent, the petitioner was working. The leave has been sanctioned by the authority, still, the charge is framed that without sanctioning the leave the petitioner is absent. The learned counsel submits that the petitioner was not unauthorisedly absent at any point of time. According to the learned counsel, the charge of not teaching the Environment subject is also erroneous. The said subject was to be taught to Class 10 students. The petitioner is a primary teacher. According to the learned counsel, in the appeal, the Commissioner has not held the petitioner responsible on account of the non filling of Passbook and the amount. The petitioner was not authorised to do that. There was no order in this regard. Even the Commissioner has not observed anything in that regard.

3. Mr. Pulkundwar, learned counsel for respondent nos. 3 and 4 submits that the petitioner remained unauthorisedly absent, subsequently got the leave sanctioned, the same is also the misconduct. The Enquiry Officer indicts the petitioner of the charge. The disciplinary authority and the Commissioner has rightly come to the conclusion.

4. The Commissioner has nowhere dilated about the same. The respondent expects petitioner to teach Class 10 students, though he is appointed as a primary teacher. With regard to the sanctioned leave also no plausible explanation is coming forth on the part of the Commissioner for holding the petitioner guilty. There is no reason adopted by the Commissioner to hold that under pressure the petitioner must have got the leave sanctioned subsequently. There should be a clear finding in that regard.

5. Considering the above, we set aside the order

of the Commissioner and relegate the parties before the Commissioner. The petitioner may produce the record before the Commissioner. The Commissioner shall re-decide the appeal on its own merits, in accordance with law, expeditiously and preferably within a period of three (3) months from the date of appearance of the petitioner and the Zilla Parishad. The petitioner and the Zilla Parishad shall appear before the Commissioner on 16th October, 2018.

6. Writ Petition accordingly stands disposed of.

No costs.

[S. M. GAVHANE, J.] [S. V. GANGAPURWALA, J.]

marathe