

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3901 OF 2018

VIRESH VILAS ANDHARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. U.R. Awate with Ms. P.S. Talekar i/b M/s.
Talekar and Associates

AGP for Respondents 1 to 3: Mr. S.B. Pulkundwar
Advocate for Respondent No.4 : Mr. R.V. Naiknavare

.....

CORAM : N. M. JAMDAR, J.
DATED : 6 DECEMBER 2018

ORAL ORDER:-

1. By this petition, the petitioner has challenged the order dated 9/10 May 2016, passed by the Chief Executive Officer, Zilla Parishad, Osmanabad and the order dated 26 February 2018 passed by the Divisional Commissioner, Aurangabad.

2. By the order dated 9/10 May 2016, the penalty of the stoppage of one year's increment was imposed on the petitioner. This penalty was imposed pursuant to the enquiry initiated against the petitioner and others. The enquiry report was submitted by the Enquiry Officer on 13 July 2015. The conclusion of enquiry report shows that charge Nos. 1 and 2 were partially proved against the

petitioner. Considering this position, penalty of stoppage of one year's increment was imposed. The appeal filed against imposition of penalty was dismissed by the Divisional Commissioner.

3. The penalties which can be imposed on the Zilla Parishad servants have been specified in Rule 4 of the Maharashtra Zilla Parishad (Disciplinary and Appeals) Rules. One of the penalty that can be imposed is withholding of an increment. The Rules provide for an appeal against the order of stoppage of increment. As regards filing of revision in respect of this penalty, it is not prohibited under the proviso to Rule 15 of the said Rules. Thus the Rules specifically prohibit further revision. This embargo is considering the nature of the penalty and with an object to put a quietus to these disciplinary issues, so that a public servant does not needlessly keep litigating and focus on the public work. The parameters of Articles 227 and 226 of the Constitution are well settled. When this is the intention of the Rule makers, unless there is gross failure of justice or patent jurisdictional error in decision making, the petition is not to be entertained.

4. In the present case, the contention of the petitioner is that the petitioner was not duty bound to supervise work and even in the enquiry report, it is held that the petitioner was merely expected to look after the work. According to the petitioner, he was only giving technical sanction.

5. It is not the position that the petitioner was not involved at all in any stage of the work. As regards the role of the petitioner is concerned, it has been considered by the Enquiry Officer in the enquiry report. The exact role of the petitioner is a fatal aspect. The charges on facts are held to be partially proved. Considering this position the Authority has decided to impose penalty of only stoppage of one year's increment, which is a minor penalty. It is within the jurisdiction of the Authority to do so. The appeal filed against this order is dismissed. The decision of the authorities of imposition of minor penalty on the premise that the charges have been partially proved is not perverse, and need not be interfered with in the writ jurisdiction. The writ petition is accordingly rejected.

6. The learned counsel for the petitioner states that as against the other penalty, directing recovery, an appeal is pending since the year 2012. The learned counsel for the petitioner states that the appeal be directed to be disposed of at the earliest. Since the appeal is pending since 2012 as contended, it has to be disposed of at an early stage. The appellate authority will dispose of this appeal within a period of 12 weeks from today.

(N. M. JAMDAR, J.)

rlj/