

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

81 WRIT PETITION NO. 7861 OF 2018

DIGAMBAR MURLIDHAR CHATE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Thombre S.S.
Advocate for Respondent no.2 : Mr. R.J. Nirmal
|----

WITH

CIVIL APPLICATION IN WP7861 OF 2018
[Jayabai Diliprao Deshpande and another vs Digambar
Murlidhar Chate and others]

...
Mr. Amol Kakade, advocate for applicants
...

**CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.**

DATE : JULY 31, 2018

O R D E R :

Heard Mr. Thombare, learned counsel for the
petitioner and Mr. Nirmal, learned counsel for
respondent no.2 Zilla Parishad.

2. The undisputed factual matrix is as under :

The petitioner is appointed on 24.2.2004 as Health Worker (Male) with Zilla Parishad, Gondiya. Thereafter he is transferred from Zilla Parishad Dindiya to Zilla Parishad, Beed on 16.1.2009 and since then he is serving with Zilla Parishad, Beed.

3. The Chief Executive Officer, Beed has passed the impugned order terminating the services of the petitioner on the ground that the petitioner had not disclosed the offences registered against him and that he is convicted for the offence. The Appellate Court had only stayed the sentence and not the conviction.

4. Mr. Thombare, learned counsel submits that the said order is perverse. The petitioner filed appeal against the order of conviction. The Appellate Court had stayed the conviction under order, dated 12.9.2014 in Criminal Appeal No. 37 of 2014. The observation is perverse.

5. Learned counsel further submits that no departmental inquiry was initiated against the petitioner. The petitioner is a permanent employee working since 2004 with Zilla Parishad. As per Rule 6 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1967, major penalty cannot be imposed without conducting departmental inquiry.

6. Mr. Nirmal, learned counsel for the respondent Zilla Parishad submits that the petitioner has an alternate remedy under Rule 13 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1967. In the light of that Writ Petition may not be entertained. Learned counsel for the petitioner relies on the judgment of the Apex Court in the case of **Nivedita Sharma vs Cellular Operators Association of India and others**, reported in 2011 (14) SCC 337.

7. Mr. Thombare, learned counsel submits that the impugned order is on the face of it erroneous. The procedure has not been followed. As such, this Court can exercise its jurisdiction under Article 226 of the Constitution of India. Learned counsel relies on the judgment in the case of **Whirlpool Corporation vs Registrar of Trade Marks, Mumbai**, reported in 1998 (8) SCC 1.

8. Mr. Nirmal, learned counsel further submits that the authority has considered that the petitioner is convicted for the offence and at the time of entering the service the petitioner suppressed the information about the criminal cases pending against him.

9. We have considered the submissions of the learned counsel for the respective parties.

10. As observed supra, it is undisputed that the petitioner is a permanent employee of respondent since 2004. It is also an admitted fact that before passing the order of termination, no departmental inquiry was initiated as required under Rule 6 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1967. It is also matter of record that the conviction sustained by the petitioner at the hands of Trial Court is stayed by the Appellate Court. The Appellate Court has passed the following order :

" (1) Execution operation of the order of conviction and sentence passed by the Judicial Magistrate First Class, Kaij on 12.8.2014 in RCC No. 196 of 1995 is stayed till final hearing and disposal of the appeal.

(2) Appellant/accused shall furnish personal bond and surety bond of Rs.15,000/-.

Dictated and pronounced in open Court."

11. The order specifically states that the order of conviction and sentence passed by the Judicial

Magistrate, First Class, Kaij on 12.8.2014 in R.C.C. No. 196 of 1995 is stayed till final hearing and disposal of the appeal. It is not disputed that the appeal is still pending.

12. The impugned order on the face of it is perverse. Even otherwise, it is admitted by respondent that no departmental inquiry was initiated against the petitioner at any point of time giving opportunity to the petitioner with regard to the grounds mentioned in the order of termination. There is violation of Rule 6 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1967.

13. In view of that, we set aside the order of termination. The petitioner shall be reinstated on its original post within a period of seven days. We make it clear that there would be no impediment for the respondent to conduct departmental inquiry

against the petitioner if the respondent so chooses for the charges. We are not granting back wages to the petitioner. However, the period from the date of termination till date shall be considered for the purpose of continuity of service and further benefits.

14. Writ Petition allowed in above terms. No costs. Civil Application stands disposed of.

[SUNIL K.KOTWAL, J.] [S.V.GANGAPURWALA, J.]

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