

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

WRIT PETITION NO.11224 OF 2016

Jyoti d/o.Khanderao Kulkarni,
Age-50 years, Occu. Service,
Ex-I/c. Administrative Officer,
Education Department,
Municipal Corporation, Parbhani,
R/o. Deshpande Galli,
Kranti Chowk, Parbhani-431 401 **PETITIONER**

VERSUS

1. The State of Maharashtra
Through it's Secretary,
Town Planning & Municipal
Administration Department,
Mantralaya, Mumbai-32.
2. The Director of Municipal
Administration, Vorli, Mumbai.
3. The Commissioner,
Municipal Corporation, Parbhani,
Dist. Parbhani. **RESPONDENTS**

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Mr.S.K.Patil, Advocate for the petitioner
Mr.P.K.Lakhotiya, AGP for the
Respondent/State
Mr.S.S.Bora, Advocate for respondent no.3.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE,JJ.**

Reserved on : 06.02.2018
Pronounced on : 09.03.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2] This Petition is filed praying therein to quash the order of punishment dated 16.06.2016, the enquiry report dated 25.02.2015 and order dated 31.08.2016 and to direct the Respondents to restore petitioner's salary amounting to Rs.44,050/- (including all allowances) in the scale of Rs.9300 to 34800 with grade pay of Rs.4300/-.

3] It is the case of the petitioner that the petitioner is possessing the qualification of S.S.C. D.Ed., B.A. and B.Ed. Initially on 27.12.1985, the petitioner was appointed as a Primary Teacher with the Zilla Parishad, Parbhani. After formation of Municipal Corporation, Parbhani, the

petitioner was transferred to the Municipal Corporation, vide order dated 22.10.1990. On the basis of qualification of the petitioner, she was promoted as a Graduate Primary Teacher on 01.01.2008 in the pay scale of Rs.5500-9000. Thereafter on 07.03.2011, the petitioner was posted as Incharge Administrative Officer, Education Department of the Municipal Corporation, Parbhani, as the post of Administrative Officer was vacant. The petitioner has discharged her duties in satisfactory manner. Her confidential reports were very good. As there were number of problems regarding available funds and grants from the Government, the salary of 71 teachers was not paid for more than 7 months. Thereafter on 15.01.2014, 71 teachers have given notice of hunger strike, demanding their salary of 7 months and fixation of pay in the appropriate pay scale. The salary was not paid to the employees as

respondent no.3 Corporation has spent the Government funds for other purposes i.e. other than Education.

4] It is further the case of the petitioner that the hunger strike of 11 days was concluded by the Collector, Parbhani, who was holding the additional charge of Municipal Commissioner at the relevant time. During preliminary investigation, respondent no.3-Commissioner has not properly enquired the matter. The allegations have been made by the leaders of the teachers Union that the petitioner has demanded money for the salary and pay fixation. As a matter of fact this aspect / action was not within the purview of the petitioner, and it was the responsibility of the Commissioner and the Deputy Commissioner, Municipal Corporation, Parbhani. After the allegations, so-called panchanama of half page was prepared wherein it was alleged that the money was demanded /

collected by the petitioner, as she was holding the charge of Administrative Officer [Education]. In the enquiry report dated 25.02.2015, it reveals that there is no evidence against the petitioner. No other corroborative evidence was adduced before the Enquiry Officer. All these facts are made in the enquiry report. The enquiry was not conducted at all. No opportunity of being heard was given to the petitioner. No opportunity of cross-examination has also been given to the petitioner. The petitioner denied only charge of taking money from the teachers. Out of 71 teachers, only 4 teachers were asked to put their say through the explanation and arbitrarily the punishment of bringing down minimum to the salary scale was imposed, resulting into Rs.17,000/- per month loss to the petitioner.

5] Learned counsel appearing for the petitioner submits that the enquiry was

conducted in violation of the principles of natural justice. No opportunity of being heard has been given to the petitioner, and no opportunity of cross-examination has also been given, and therefore, the Petition deserves to be allowed.

In support of the aforesaid contention, learned counsel appearing for the petitioner placed reliance upon the judgment of the Supreme court in the case of *Himachal Pradesh State Electricity Board Limited Vs. Mahesh Dahiya*¹.

6] On the other hand, learned counsel appearing for respondent no.3 relying upon the averments in the affidavit-in-reply submits that, in the year 2011 the petitioner was posted as an Incharge Administrative Officer, Education Department of the Municipal Corporation, Parbhani. In the year 2014, there was strike by the teachers as

¹ [2017] 1 SCC 768

they were not being paid their salaries in time. Due to the said strike, the then Collector, Parbhani, who was also holding the charge as Commissioner of the Corporation interfered to stop the said strike by holding talks with the Teachers in presence of Local MLAs. During the said meeting with the Commissioner, 5 teachers made allegations against the present petitioner and claimed that she was purposefully troubling the teachers and was demanding an amount of Rs.3,000/- and Rs.7,000/- in the name of Shri Nilawad, so as to complete the work of payment of salary and pay fixation. During the said meeting, the petitioner herself has admitted the allegations, and therefore, the Commissioner has immediately put the petitioner under suspension, and directed to conduct a departmental enquiry against her. It is stated in the said affidavit in reply that in view of directions of the

Commissioner, Shri Ranjeet Patil was appointed as Enquiry Officer and he was directed to submit the report. The Enquiry Officer has recorded the statements of the witnesses. Mr. Munawar Hussain has categorically stated that the petitioner has demanded the amount from the teachers for making their salary and pay fixation. The petitioner has also admitted the said fact before the Commissioner and the Local MLA, and accordingly, the panchanama was also prepared.

7] It is submitted that after full-fledged enquiry, the report was submitted to the Commissioner, Municipal Corporation, Parbhani on 25.02.2015. After going through the said report, the Deputy Commissioner has passed the order dated 16.06.2016, thereby bringing the petitioner's pay to the minimum in view of the powers under Section 56 of the Maharashtra Municipal Corporation Act. The

said order is quite legal, proper and same is passed after receipt of the detailed enquiry report. The enquiry report clearly indicates that the petitioner has demanded the amount from the teachers for payment of their salary and pay fixation, and therefore, the punishment imposed on the petitioner is just, legal and proper. The petitioner was given punishment as per Section 56 [2] [c] of the Maharashtra Municipal Corporation Act and the said punishment is just and proper. Thereafter, the petitioner has filed an appeal before the Standing Committee. After considering the allegations against the petitioner, the Standing Committee was pleased to dismiss the appeal filed by the petitioner. It is submitted that the petitioner was not given opportunity of being heard during the enquiry is not true and correct. In fact, the petitioner was given opportunity, and accordingly, the petitioner

has submitted her written submission. It is submitted that the petitioner, who was incharge Officer of the Education Department, has demanded illegal amount from the teachers for making the payment of their salary and pay fixation. Therefore, the learned counsel submits that the Petition may be dismissed.

8] We have heard the learned counsel appearing for the parties. With their able assistance, we have perused the pleadings and grounds taken in the Petition, annexures thereto and affidavit-in-reply filed on behalf of respondent no.3. *Prima facie*, we find considerable substance in the argument of the learned counsel appearing for the petitioner that the principles of natural justice have not been scrupulously followed in the letter and spirit by the Enquiry Officer, and the Appeal filed by the petitioner has been dismissed without considering various contentions raised by the

petitioner in the appeal. Upon careful perusal of the order passed by the Appellate Authority, we are of the opinion that, there are no reasons stated in the impugned order by the Appellate Authority. An appeal is valuable right of the party, and the same is available on facts as well as law. In the present case, the Standing Committee of respondent no.3 has not considered the various contentions raised by the petitioner.

9] In that view of the matter, in our considered view the ends of justice would be met in case the impugned order dated 31.08.2016 passed by the Appellate Authority i.e. the Standing Committee of respondent no.3 is quashed and set aside. The Appellate Authority is directed to re-consider the appeal filed by the petitioner, if necessary, by affording opportunity of hearing to the petitioner, and taking into consideration all the contentions of the petitioners in respect

of not conducting fair and proper enquiry and decide the same on its own merits as expeditiously as possible, however, within 6 months from today.

10] The Petition is partly allowed. Rule is made absolute in above terms. The Writ Petition stands disposed of accordingly.

11] We have not expressed any opinion on merits of the contentions raised by the petitioner in the Petition, and it is for the Appellate Authority to consider the case of the petitioner afresh on its own merits.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE