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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 5988 OF 2006**

Ramesh L. Churi

.....Petitioner

V/s.

The Chief Executive Officer, Zilla Parishad
Thane.

.....Respondent

Mr. K. K. Malpathak for the petitioner
Mr. S. P. Thorat for the respondent.
Mr.M.M.Pabale, AGP for respondent-State.**CORAM : SHANTANU S. KEMKAR AND
NITIN W. SAMBRE, JJ.****DATE : JUNE 7, 2018.****P.C.**

Challenging the order dated 04/12/2003 passed by the Chief Executive Officer, Zilla Parishad, Thane, imposing penalty of withholding two increments with cumulative effect on him, the petitioner had filed appeal no. 51 of 2004 before the Commissioner, Konkan Division. The said appeal was dismissed by the Commissioner vide order dated 29/09/2005. Feeling aggrieved by

the said orders, the petitioner has filed this petition under Article 226 of the Constitution of India.

2 According to the petitioner, the impugned order of penalty will fall within the purview of major penalty in view of the law laid down in the case of **Kulwant Singh Gill V/s. The State of Punjab**¹ and **Narendra s/o Motiram Bodkhe**². In the circumstances, according to him, without following the procedure prescribed under Rule 4 and 6 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, the impugned order could not have been passed.

3 On the other hand the learned counsel appearing for the respondent submits that the petitioner was given a show cause notice and after considering his reply, the impugned order has been passed which clearly spells the misconduct which has been committed by the petitioner. He also submits that the Appellate Authority has also recorded a categorical conclusion which reads thus:

1 II CLR S.C. 687

2 2006 (5) Mh.L.J.

*“After taking into consideration the submissions of the Appellant, arguments of the Respondent, available documents and arguments at the time of hearing, it is seen that the Appellant in the course of his duty, did not make proper plan for the future, and even though he was working as a Health Supervisor, did not carry out visits and was not doing the work allotted to him. **Though the appellant was not present in the area of duty when the incident took place, yet, the Appellant is guilty of dereliction of not planning for the future**”.*

4 In the circumstances, according to him, even though the procedure prescribed for imposing penalty of major misconduct has not been followed, the petitioner is guilty of the allegation which was levelled against him.

5 Having considered the aforesaid submissions and having noticed the finding which has been recorded after considering the petitioner's reply to the show cause notice by two authorities, we find that the petitioner has been found guilty as aforesaid. In the circumstances, we have asked the learned counsel for the petitioner as to whether the petitioner would be satisfied, if the impugned

order of imposing major penalty i.e. of withholding of two increments with cumulative effect is substituted by penalty of withholding of two increments without cumulative effect, the learned counsel for the petitioner on instructions from the petitioner who is present in person submits that the petitioner will be satisfied if the punishment of withholding of two increments with cumulative effect is converted into punishment of withholding of two increments without cumulative effect.

6 In the circumstances, as agreed by the learned counsel for the parties, this petition is partly allowed to the extent that the impugned orders are set aside so far as it relates to imposition of major penalty and instead we modify the punishment imposed upon the petitioner to the extent that the petitioner is held guilty of minor misconduct and is imposed minor penalty of withholding of two increments without cumulative effect.

7 It has been informed that now Zilla Parishad, Thane is divided into two Districts, namely Zilla Parishad, Thane and Zilla Parishad,

Palghar. According to the learned counsel for the Zilla Parishad, Thane, the order needs to be forwarded to Zilla Parishad, Palghar as the petitioner is working under Zilla Parishad, Palghar. Let the Zilla Parishad, Palghar to comply with the order expeditiously.

8 We have requested the learned AGP appearing for the State to inform the order to Zilla Parishad, Palghar for compliance of the order. The learned counsel for the Zilla Parishad, Thane shall also inform the order to Zilla Parishad, Palghar.

9 Parties to act on authenticated copy of this order.

[NITIN W. SAMBRE, J.]

[SHANTANU S. KEMKAR, J.]