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

LETER PATENTS APPEAL NO. 230 OF 2010
IN WRIT PETITION NO. 2004 OF 2009
WITH CA/11211/2010 IN LPA/230/2010

Dipak Marutirao Pathak
Age : 41 years, occu.: service
R/o “Mangalam”, Pot No.191,
Acharya Nagar, Wasmat
Nagar, Parbhani. Appellant.

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai – 32.

2. The Divisional Commissioner
Aurangabad Division,
Aurangabad.

3. The Chief Executive Officer,
Zilla Parishad, Hingoli.

4. The executive Engineer (Works)
Zilla Parishad, Hingoli.

5. The Block Development Officer
Panchayat Samittee, Oundha,
District Hingoli. Respondents.

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Mr. S.B. Bhapkar, Advocate holding for
Mr. S.K. Patil, Advocate for the appellant.

Mr. S.P. Tiwari , A.G.P. for respondent Nos.1 & 2.

Mr. B.A. Shinde, Advocate for respondent Nos.3 to 5.

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CORAM : **T.V. NALAWADE AND SUNIL K. KOTWAL, JJ.**

Dated : **30 January 2019.**

ORAL JUDGMENT :-

. The appellant has challenged the order of learned Single Judge passed in Writ Petition No.2004 OF 2009. Both the sides are heard.

2. The appellant was working as a Civil Engineer with Zilla Parishad. Show-cause notices were issued to him on 06.04.2004 and 21.04.2004 and following irregularities and charges were informed to him :-

(i) When there was no budgetary provision as there was no sanction to the budget, the amount of grant in respect of the work was released;

(ii) When there was no assessment of the value of work by Executive Engineer and there was no verification of measurement, the second installment of the work was given; and

(iii) There was no compliance of Rule 171 (1) of Account Code at the time of releasing of second installment in respect of the work.

3. In respect of Charge (i) the appellant submitted that he was not involved in that matter. In respect of Charge (ii) he informed that as he was Civil Engineer, he had no knowledge about the valuation of the work and there were no specific instructions to him in that regard. As regards Charge (iii) the appellant contended that as the work was entirely new, he was not having experience of such work and only on the basis of purchases made by Village Panchayat, he recorded the measurement in measurement book.

4. The aforesaid reply given by the appellant shows that on one hand he contended that he was Engineer of Civil side and as the work was electrical one, he had no experience. On the other hand, he contended that he did the measurement of work on the basis of record created by Village Panchayat and not by actually measuring the work. He also admitted in his reply that he had put up office note for taking approval of Higher Authority for releasing the amount. The aforesaid circumstances and the admissions given by the appellant are sufficient to infer that he

was responsible for releasing both installments in favour of Village Panchayat, contractor appointed by Village Panchayat. If he had doubt that he was not competent to take measurement as the work was electrical one, he ought to have informed the superior officer accordingly, but he played his role as mentioned above and due to his recommendation both installments were released.

5. The amount of Rs. 3,81,118/- was the amount of first installment and there was similar amount in respect of the second installment. The Authority had made assessment of loss and it was of around Rs. 30,188/-, but the Authority has held that the amount was not actually misappropriated and he could not have received that amount and so he is exonerated in respect of the liability of Rs. 30,188/-. The Authority held him responsible for aforesaid irregularities which are admitted and for that admitted fault, one increment is withheld permanently.

6. Learned Counsel for the appellant submitted that as one increment was stopped permanently, the penalty could not have been treated as a minor penalty and so Departmental Enquiry ought to have been started, which is necessary for

imposition of major penalty. He also submitted that no show-cause notice was issued on the point of quantum of penalty. Learned Counsel took this Court through Rules 4 and 7 of Maharashtra Zilla Parishads Service (Discipline and Appeal) Rules, 1964. Rule 4 of the said Rules shows that stopping of increment is treated as minor penalty. Rule 7 shows that before imposing minor penalty, show-cause notice needs to be issued to inform the allegations, charges and after considering the explanation given, the minor penalty can be imposed. Thus, the Rules do not mention issuing of separate show-cause notice on the point of quantum of penalty. As per the record it can be said that loss was actually sustained by Zilla Parishad to aforesaid tune and even when there was no budgetary sanction, one installment was released due to negligence of the present appellant. In view of these circumstances, this Court holds that withholding of one increment permanently was justified. Even more serious penalty could have been given in view of the stand taken by the appellant. This Court sees no reason to interfere in the order made by the learned Single Judge.

7. In the result, the appeal stands dismissed. Civil Application is disposed of accordingly.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

vdd/