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

WRIT PETITION NO.9599 OF 2010
WITH
CIVIL APPLICATION NO.14763 OF 2015

Premanand s/o Amrutlal Upacharya
Age 40 years, Occu. Service as
Primary Teache with Zilla Parishad
Primary School, Jayashree,
Taluka Sakri, District Dhule,
R/o 40, Muktai Nagar,
Near Netaji Ground, Deopur, Dhule
Taluka and District Dhule ... PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary,
Department of Rural Development
and Water Conservation, M.S.,
Mantralaya, Mumbai – 400 032
2. The Additional Divisional Commissioner,
Nashik Region, Nashik
3. The Chief Executive Officer,
Zilla Parishad, Dhule
4. The Education Officer (Primary),
Zilla Parishad, Dhule ... RESPONDENTS

(Notices to the respondent Nos.1 and 2
to be served through Government Pleader,
High Court of Bombay, Bench at Aurangabad)

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Shri Rajendra S. Deshmukh, Advocate for petitioner
Shri A.S. Shinde, A.G.P. for respondents No.1 and 2
Shri R.S. Pawar, Advocate for respondents No.3 and 4
.....

CORAM: R.G. AVACHAT, J.

Date of reserving judgment : 30th September, 2019

Date of pronouncing judgment : 11th October, 2019

JUDGMENT:

. The challenge in this Writ Petition is to the order dated 28.6.2010, passed by Additional Commissioner, Nasik Division, Nasik in Appeal No.EMP/14/2010, whereby the said appeal came to be dismissed by confirming the order dated 15.3.2010, demoting the petitioner from the post of Kendra Pramukh to Primary Teacher. One more order under challenge in this petition is the order dated 30.8.2010, passed by the Desk Officer in the Department of Rural Development and Water Conservation, Maharashtra State, Mantralaya, Mumbai, whereby the petitioner has been directed to be subjected to a proceeding under Rule 6 of the Maharashtra Zilla Parishads (Conduct) Rules, 1967.

FACTS :

2. The petitioner claims to have belonged to "Thakur", a Scheduled Tribe. He completed Diploma in Education in the year 1988. Petitioner joined the service as Primary Teacher with

Zilla Parishad, Dhule, in 1989. He earned a degree in Bachelor of Arts (B.A.) in 2001, and then Bachelor of Education (B.Ed.) in 2005, after obtaining necessary permission from the office of Education Officer (Primary), Zilla Parishad, Dhule (respondent No.4). The petitioner submitted an application to the Chief Executive Officer (C.E.O.), Zilla Parishad, Dhule (respondent No.3), asking for promoting him to the post of Kendra Pramukh, on the ground of having earned higher education with prior approval of the higher authorities during the service. According to the petitioner, a few of the Teachers senior to him had also earned higher education during their continuation of service, however, without obtaining prior permission of the Head of the Department.

3. Pursuant to the application moved by the petitioner, a meeting of the Selection Committee headed by Additional Chief Executive Officer, Zilla Parishad, Dhule was held. The petitioner came to be promoted to the post of Kendra Pramukh w.e.f. 1.7.2008. Teachers senior to the petitioner made some complaint as regards the petitioner having been promoted superseding them.

4. As a result of the said complaint, the C.E.O. demoted the petitioner to the post of Primary Teacher w.e.f. March 2010. The petitioner preferred an appeal being Appeal No.14/2010 before the Additional Commissioner, Nasik. After having been unsuccessful in the appeal, the petitioner moved the State of Maharashtra in the Department of Rural Development and Water Conservation. It was found that the revision was not maintainable to the State Government. The Desk Officer asked the respondents No.2 and 3 to take action against the petitioner under the Maharashtra Zilla Parishad Services (Conduct) Rules, 1967 (hereinafter referred to as the Conduct Rules).

5. Mr. Rajendra S. Deshmukh, learned counsel for the petitioner would submit that, no opportunity of hearing was given to the petitioner before he was demoted from the post of Kendra Pramukh to the post of Primary Teacher. There is no provision which bars application of provisions of Secondary School Code (S.S. Code) to the employees of Zilla Parishad. The Desk Officer did not have a jurisdiction to direct to initiate any departmental proceedings against the petitioner. The learned counsel ultimately urged for allowing the Writ Petition.

6. Learned counsel representing the Zilla Parishad took me through the impugned orders, to ultimately suggest the petitioner to have been given an audience before the order of demoting the him came to be passed. According to learned counsel, the S.S. Code has no application to the employees of the Zilla Parishad. Learned counsel supported the impugned order.

7. Learned A.G.P. representing the State authorities reiterated the submissions made by the learned counsel appearing for the Zilla Parishad.

8. The petitioner belongs to "Thakur", Scheduled Tribe. He joined the service as a Primary Teacher with the Zilla parishad, Dhule after completing Diploma in Education. During continuation of his service, he completed B.A. in 2001, and then B.Ed. in 2005. The petitioner then applied to the respondent No.4, asking for promoting him to the post of Kendra Pramukh. In response to his application, a meeting of the Selection Committee for promotion was held in May 2008. The Committee was headed by Additional Chief Executive Officer, Zilla Parishad, Dhule. The petitioner came to be promoted to

the post of Kendra Pramukh. Teachers senior to him made a complaint, pursuant to which an enquiry was held, and petitioner came to be demoted to the post of Primary Teacher. The pleadings undoubtedly indicate the petitioner admits to have been heard before the impugned order demoting him came to be passed. The petitioner was given audience. He had made his submissions orally and in writing as well. The same is evident from the reasons given in the impugned order. The petitioner, therefore, could not be heard to say to have not been given an opportunity of hearing before the impugned order of demotion came to be passed.

9. Another limb of the argument of learned counsel for the petitioner is that, there is no provision which bars the application of S.S. Code. The said submission also runs counter to the pleadings in the petition. The petitioner has admitted in no uncertain terms that the provisions of S.S. Code have no application to the employees of Zilla Parishad. The petitioner was promoted on the strength of Rule 31(2) of the S.S. Code, which had, in fact, no application. There were three more Teachers senior to the petitioner. No post in the Cadre of Kendra Pramukh reserved for Scheduled Tribe category was

vacant while the petitioner came to be promoted. The record further indicates that, the meeting of the Promotion Committee, wherein the petitioner came to be promoted was held under the Chairmanship of Additional Chief Executive Officer, Zilla Parishad, Dhule.

10. It is the case of the respondents that, as per the assignment/ distribution of the administrative work, the subject did not fall within the jurisdiction of the Additional Chief Executive Officer, who presided over the meeting held for promoting the petitioner. It also appears that, the approval of the C.E.O. had not been obtained to the decision, whereby the petitioner came to be promoted. Only the posting order of the petitioner to the promotional avenue was issued under the signature of C.E.O. Since the petitioner came to be promoted in complete disregard to the procedure and the relevant rules, he came to be demoted. No fault, therefore, could be found with the impugned order dated 15.3.2010, whereby the petitioner was brought back to the post of Primary Teacher.

It was informed that, the petitioner has now been promoted in due course, to the post of Kendra Pramukh.

11. The petitioner first challenged the impugned order before the Additional Commissioner, Nasik. After having been unsuccessful in appeal, he preferred revision application to the State Government. The Desk Officer of Rural Development and Water Conservation Department, Government of Maharashtra, by his communication dated 30.8.2010, requested the respondents No.2 and 3 to inform the petitioner that no proceeding against the decision passed by the Additional Commissioner (Revenue) is maintainable before the State Government. The said authorities were also requested to take appropriate action pursuant to Rule 6 of the Conduct Rules. The said Rule speaks of prohibition against contacting authorities other than those to which Parishad servants are immediately subordinate. The petitioner, being aggrieved by the order of the Chief Executive Officer, demoting him to the post of Primary Teacher, preferred an appeal to the Additional Divisional Commissioner, Nasik. After having been unsuccessful in the appeal, he preferred a communication, titled and in the nature of an appeal against the decision of the Additional Commissioner. The same indicates the petitioner to have been unaware of the forum of appeal. The mere fact that the petitioner preferred a

communication in the nature of a memo of appeal to the Hon'ble Minister of State for Rural Development and Water Conservation Department, Mantralaya, Mumbai could not be termed to be an act in breach of Rule 6 of the Conduct Rules. The directions given by the Desk Officer by his communication dated 30.8.2010 to the Chief Executive Officer to deal with the petitioner in accordance with Rule 6 of the Conduct Rules, therefore, needs to be set aside.

12. For the reasons given hereinabove, the petition partly succeeds. The petition is allowed only to the extent of setting aside the order of Desk officer, dated 30.8.2010, requesting the Chief Executive Officer to deal with the petitioner in terms of Rule 6 of the Maharashtra Zilla Parishads District Services (Conduct) Rules, 1967.

Rule made absolute in above terms.

13. In view of disposal of the Writ Petition, Civil Application No.14763/2015 is disposed of.

(R.G. AVACHAT)
JUDGE

fmp/-