

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7574 OF 2018

Bhaskar Nimba Amrutsagar

...Petitioner

versus

The State of Maharashtra and others

...Respondents

.....
Mr. A. R. Syed, advocate for the petitioner
Mr. A. S. Shinde. A.G.P. for respondent Nos.1 and 3
Mrs. Nima R. Suryawanshi, advocate for respondent No.2
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order :05.11.2019**

**Date of pronouncing
the Order :04.03.2020**

ORDER :-

1. By consent of the parties, heard finally at admission stage.
2. This writ petition is filed challenging the order dated 25.03.2015 passed by the Disciplinary authority, order dated 3.10.2016 passed by the appellate authority and the order dated 17.01.2018 passed by the respondent No.1 in E.M.P. Appeal No. 2 of 2017, thereby confirming the punishment imposed by the disciplinary authority under the provisions of Maharashtra Zilla Parishads Districts Services (Conduct) Rules 1967 (hereinafter for the sake of brevity referred to as the "Rules of 1967").

3. Brief facts giving rise to the present writ petition are as follows:-

a) The petitioner was working as Assistant Teacher with Zilla Parishad school at Chinchkheda, Tq. Sakri, District Dhule. There was some dispute between Suresh Londhe and the petitioner and as a result thereof, both of them lodged complaints against each other. The said Suresh Londhe had lodged complaint against the petitioner alleging therein that the petitioner is undertaking various private works without permission of the Chief Executive Officer though in service. The said Suresh Londhe had made several representations to that effect. Though there was no substance in the allegations, however, the Education Officer (Primary) had issued show cause notice to the petitioner on 24.2.2011 and the petitioner had replied the said notice on 28.2.2011. Thereafter, on 10.3.2011 the respondent No.2 had issued show cause notice to the petitioner about violation of Rule 3 of the Rules of 1967. The petitioner had also submitted reply to the said notice.

b) According to the petitioner, the Education Officer (Primary) had conducted preliminary enquiry. However, the petitioner was not apprised of the said enquiry. In consequence thereof, the petitioner was suspended by order dated 18.6.2012. On 18.10.2012 charge sheet came to be issued against the petitioner by respondent No.2 Disciplinary authority. Alongwith the charge sheet, annexures 1 to 4

were supplied. The petitioner had submitted explanation to the charges on 23.10.2012. Thereafter, Enquiry Officer was appointed vide order dated 23.11.2012 and the said Enquiry Officer had conducted enquiry and submitted his report on 20.5.2014. There were five charges levelled against the petitioner.

c) The petitioner was exonerated from charge No.1 and rest of the charges were held to be proved against him. Consequently, respondent No.2 disciplinary authority has accepted the enquiry report and issued show cause notice to the petitioner for imposing major penalty. The petitioner replied to the notice on 08.10.2014 and tendered his explanation, however, it was not accepted. By impugned order dated 25.3.2015 the respondent No.2 disciplinary authority imposed major penalty whereby the petitioner was brought on half scale of the salary. He was also subjected to penalty of treating the suspension period as earned leave and if the earned leave is not available, then leave without pay. Being aggrieved by the said order dated 25.3.2015, the petitioner preferred appeal No. 26 of 2015 before the Divisional Commissioner, Nashik. By order dated 03.10.2016, respondent No.3 Divisional Commissioner, Nashik has dismissed the appeal. Being aggrieved by the order dated 3.10.2016 passed by the Divisional Commissioner, Nashik, the petitioner preferred E.M.P. Appeal No. 2 of 2017 before respondent No.1. By impugned order dated 17.1.2018 the respondent No.1 has dismissed E.M.P Appeal No. 2 of 2017. Hence, this writ petition.

4. Learned counsel for the petitioner submits that there is no evidence against the petitioner in terms of Rule 10 of the Rules of 1967. The petitioner was not engaged directly or indirectly in any trade or business or undertaken any employment. Learned counsel submits that as per charge No.2 levelled against the petitioner, since the year 2000 the petitioner allegedly worked for Dr. Babasaheb Ambedkar Rural Development Foundation Sanstha without previous permission of respondent No.2 as such. Learned counsel submits that the said institution has been registered under the provisions of Maharashtra Public Trust Act 1950 and in terms of the proviso to Rule 14, the Parishad servant may, without sanction of the Chief Executive Officer, undertake honorary work of a social or charitable nature or occasional work of literary, artistic or scientific character, subject to the condition that his official duties do not thereby suffer and that he discontinues such work if so directed by the Chief Executive Officer. Learned counsel submits that there are no allegations against the petitioner that because of the said charitable work his official duties suffered. Learned counsel submits that the petitioner was never subjected to any disciplinary action about his official duties nor he was directed at any point of time by the Chief Executive Officer to discontinue such charitable work. Learned counsel submits that so far as charge No.3 is concerned, there is no evidence at all that the petitioner had accepted the contribution or raised funds in respect of the said charitable institution. Learned counsel submits that so far as charge Nos.4 and 5 are concerned,

the administration of Zilla Parishad never asked the petitioner to submit his property details and that in the year 2005-2006 when those details were called, the petitioner has submitted his report about purchase of residential building and the motor cycle. Learned counsel submits that there is no violation of Rule 17 of the Rules of 1967, in any manner. Learned counsel submits that while conducting enquiry, respondent No. 2 has violated the mandatory provisions of Rules of 1967, more particularly Rule 6(9) thereof was not followed. The petitioner was not given an opportunity to nominate any person to represent his case, as provided under Rule 6(5) of the Rules of 1967. No finding was recorded by respondent No.2 and thus, the final show cause notice dated 8.10.2014 is without jurisdiction. The said action is a fine example of non application of mind. The punishment is shockingly disproportionate, excessive and unreasonable. The past performance of the petitioner for 23 years and his achievements were not taken into consideration while imposing the penalty. Learned counsel submits that the orders impugned are thus liable to be set aside and this writ petition deserves to be allowed.

5. Learned counsel for the petitioner, in the alternate, submits that the punishment as imposed by the disciplinary authority is disproportionate to the charges proved as against the petitioner as such. The petitioner is a sincere employee. He has never been subjected to any disciplinary action in respect of the performance of

duties and therefore, a lenient view may be taken against him.

6. Learned counsel for the petitioner, in order to substantiate his submissions, placed reliance on the following judgments:-

- i) Vijay Singh vs. Union of India and others, reported in 2007 AIR (SC) 1384;
- ii) Sunil Chandrashekhar Akant vs Additional Commissioner, Nagpur and others, reported in 2018 (3) Mh.L.J. 352,
- iii) Bhagwan s/o Namdeo Sawant vs. State of Maharashtra and others, reported in 2011 (4) ALL MR 300.

7. Learned counsel for respondent No.2 submits that the impugned orders are passed by following the provisions of law and in consonance with the record as well as the enquiry conducted by authorities having jurisdiction and powers as per service Rules and regulations and after giving proper opportunity of hearing at each and every time with prior supply of all necessary documents including show cause notice, charge sheet alongwith all annexures. Learned counsel submits that the said order of imposing penalty is after following the mandatory rules, regulations and adhering to the principles of equity, natural justice and opportunity of hearing as well as giving thoughtful consideration to the defence raised by the petitioner and the record produced alongwith evidence and

statements recorded. Learned counsel submits that after considering all the record, the service tenure and the Rules, reasonable punishment has been imposed on the petitioner which has been rightly confirmed by the appellate authorities i.e. respondent Nos. 1 and 3. Learned counsel submits that sufficient opportunity was given to the petitioner to lead evidence and produce documents on record.

8. Learned counsel for respondent No.2 submits that charges No. 2, 3, 4 and 5 are duly proved against the petitioner. There is clear violation of Rules 10 and 17 of the Rules of 1967. The petitioner has not placed on record the copies pertaining to the registration of the said institution as charitable institution and as such, the petitioner is not entitled to be protected in terms of proviso to Rule 14 of the Rules 1967. Learned counsel submits that in view of the provisions of Rule 17 of the Rules of 1967, the petitioner should have purchased the property with previous sanction of the Chief Executive Officer. He has purchased the immovable and movable properties while in service without previous sanction of the Chief Executive officer. Thus, the punishment is proportionate to the charges proved against him. No interference is required. The writ petition is liable to be dismissed.

9. I have also heard the learned A.G.P. for respondent Nos. 1 and 3.

10. I find no substance in the submissions made on behalf of the petitioner that the mandatory provisions are not followed while conducting the departmental enquiry. There are definite charges framed against the petitioner and he was given opportunity to submit his explanation. The petitioner had also cross examined witnesses of the department.

11. So far as charge Nos. 2 and 3 are concerned, I do not find any evidence against the petitioner that he engaged in any trade or business or undertaken any employment either directly or indirectly. Furthermore, there is no documentary evidence before the Enquiry Officer that the petitioner has accepted contribution or otherwise associated himself in raising any funds. Even assuming that the petitioner is associated with said Dr. Babasaheb Ambedkar Rural Development Foundation, however, the documents at Exh. RA-3 pages 107 and 108 unequivocally demonstrate that the said institution is registered as a Public Trust vide registration No. F/5481/Dhule and also registered under the Societies Registration Act 1860, way back in the year 2000.

12. I have carefully gone through the Rules of 1967. Rule 14 of the said Rules is as follows:-

“14. Private trade or employment.- (1) No Parishad servant, shall, except with the previous sanction of the Chief

Executive Officer engage, directly or indirectly, or any trade or business or undertake any employment:

Provided that, a Parishad servant may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of literacy, artistic or scientific character, subject to the condition that his official duties do not thereby suffer and that he discontinues such work if so directed by the Chief Executive Officer.

Explanation.- Canvassing by a Parishad servant in support of the business of insurance agency or commission agency, owned or managed by any member of his family shall be deemed to be his engaging in trade or business within the meaning of this sub-rule.

(2) No Parishad servant shall, except with the previous sanction of the Chief Executive Officer, take part in the registration, promotion or management of any bank or company registered under the Companies Act, 1956 or any other law for the time being in force.

Provided that, a Parishad servant may take part in registration, promotion or management of a co-operative society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960 or any other law for the time being in force, or of a literacy, scientific or charitable society registered under the Societies Registration Act, 1860 or any other corresponding law for the time being in force.”

13. In terms of proviso to Rule 14 of the Rules of 1967, the Parishad servant may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of literacy,

artistic or scientific character subject to the condition that his official duties do not thereby suffer and that he discontinues such work if so directed by the Chief Executive Officer.

14. In the instant case, there are no charges against the petitioner that because of his association with the said charitable institution, his official duties suffered thereby and that despite the direction given by the Chief Executive Officer he continues association with said charitable trust. It further appears from the enquiry report that the charges 2 and 3 are held to be proved only on the ground that the petitioner has not clearly defended himself against those charges. It is for the department to prove the charges on the basis of the substantial evidence and the charges cannot be proved on the basis of weakness of the defence raised by the petitioner. Even assuming that the association of the petitioner with the said charitable institution is proved and that he has collected certain amount as donation for the said charitable institution and not for himself, the said act would not violate Rules of 1967, particularly Rule 10 r.w. Rule 14 of the said Rules. In view of the same, the disciplinary authority should have exonerated the petitioner from charges 2 and 3.

15. So far as charges 4 and 5 are concerned, there is clear evidence against the petitioner. The petitioner had purchased the immovable so also the movable properties in the form of motor cycle

and residential building. The petitioner has also not denied the same. In terms of the provisions of Rule 17 of the Rules of 1967, the petitioner could not have purchased the property without previous sanction of the Chief Executive Officer. The petitioner has raised defence that no such details were called till the year 2005-2006 by the administration of the Zilla Parishad and as such, there is no fault on the part of the petitioner. I do not think that the same is the requirement of Rule 17 of the Rules of 1967. The petitioner should have shown the known legal source of purchasing the said properties from dealer or agent as approved by the Chief Executive Officer or compliance of the Rule 17 (1) of Rules 1967 after its purchase. Those charges are serious in nature and duly proved against the petitioner. Even though the petitioner deserves to be exonerated so far as the charges 2 and 3 are concerned, the charges 4 and 5 which are duly proved are serious in nature, for which the punishment, as imposed by the disciplinary authority and confirmed by the appellate authority, is proportionate and therefore, I am not inclined to interfere in the impugned orders. Hence, I proceed to pass the following order:-

O R D E R

Writ petition is hereby dismissed.

(V. K. JADHAV, J.)