

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

WRIT PETITION NO.1901 OF 2017

(Abdul Munaf Shaikh s/o Dada Miyan Shaikh Vs. Zilla Parishad, Nagpur thr. the
 Chief Executive Officer, Zilla Parishad, Nagpur)

*Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.*

Court's or Judge's orders.

 Shri M.M. Akhtar, Advocate for Petitioner.
 Mrs. Mayuri Deshmukh, Advocate for Respondent No.1.
 Shri A.M. Balpande, Advocate for Respondent No.2.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 30th JANUARY, 2020.

1] Considering that a service dispute is involved and the learned Advocates for the respective sides were ready with the matter, the Civil Application No.239/2020 stands disposed off.

2] I have heard the learned Advocates for the petitioner and respondent no.1 and the learned AGP on behalf of respondent no.2.

3] The petitioner has put-forth prayer clause A and B as under:-

A) *Issue the Writ of Mandamus or appropriate Writ, Order or direction to the respondent to quash the order dated 08-02-2011 (Annexure B) issued by respondent inflicting the punishment of reduction of two increments without cumulative effect, order dated 21-3-2013 in Appeal No.62/2010-11 (Annexure C),, order dated 15-02-214 (Annexure D) in Review Petition issued by the Divisional Commissioner,*

Nagpur, and order dated 16-01-2016 (Annexure G) cancelling the order dated 6-2-2014 (Annexure E) issued by the respondent granting time bound promotion on completion of 24 years service.

B) Hold that petitioner is entitled all the consequential benefits, wages, retiral benefits with 18% interest till the amount is not paid.

4] The petitioner joined duty as a Junior Accounts Officer on 21.07.1983 and has attained the age of superannuation on 31.07.2012. His past record is clean and unblemished.

5] The petitioner was served with a charge-sheet dated 07.07.2008 by which, it was alleged that he had taken an advance amount of Rs.12,000/- for the purpose of *shibir/melawa* of the Scheduled Castes and Scheduled Tribes Category, who are employees of the department. He failed to account for the expenses despite that there was no such *shibir or melawa* organized by the Social Welfare Department on 31.03.2007. After he was reminded of the same by the Block Development Officer, Panchayat Samiti, Mauda, he returned the amount of Rs.12,000/- on 09.01.2008. He was therefore, charged with temporary misappropriation.

6] There is no dispute that a departmental enquiry was initiated with reference to the charge-sheet and the Enquiry Officer submitted his findings on 19.06.2009. It is undisputed that the Enquiry Officer did not find the petitioner guilty of any charge and has exonerated him.

7] It is equally undisputed that the petitioner was suspended on 31.01.2008, the charge-sheet was issued on 07.07.2008 and the order of suspension was recalled on 28.12.2008.

8] The petitioner is aggrieved by the order dated 08.02.2011 passed by the Zilla Parishad holding the petitioner guilty of the charges set out in the charge-sheet dated 07.07.2008 and he was subjected to the punishment of stoppage of future increments for a period of two years. His suspension period was deemed to be a period of regular service.

9] The petitioner preferred an Appeal No.62/2010 before the Divisional Commissioner, Nagpur. By the impugned order dated 21.03.2013, his appeal was dismissed by the Divisional Commissioner on the ground that he had not acted honestly with reference to the advance amount of Rs.12,000/-.

10] The petitioner has raised an issue in this petition which is purely a question of law. Whether an employer can disagree with the findings of the Enquiry Officer if he has exonerated an employee and if the management finds it appropriate to hold him guilty of the charges which are not held to be proved, what would be the course to be adopted by the employer.

11] I find that the petitioner's case is supported by the following judgments:-

[a] Yoginath D. Bagde v. State of Maharashtra and another (1999) 7 SCC 739.

[b] Managing Director ECIL, Hyderabad and others v. B. Karunakar and others (1993) 4 SCC 727.

[c] Punjab National Bank v. Kunj Behari Mishra AIR 1998 SC 2713.

[d] State Bank of India v. K.P. Narayanan Kutty (2003) 2 SCC 449.

[e] Punjab National Bank v. K.K. Verma (2010) 13 SCC 494.

12] From the judgments cited, it appears well settled that if an employer desires to disagree with the findings of an Enquiry Officer exonerating a delinquent, it has to list out reasons with justification as to what is the material available which would support a conclusion of holding the delinquent guilty. Such material, with reasons, has to be set out in a show cause notice and the same is to be served on the charge-sheeted employee calling upon him to show cause as to why he should not be held guilty. The employee therefore, has the opportunity of showing cause to convince the employer that the findings of the Enquiry Officer need not be discarded and deserve to be accepted.

13] In the instant case, no such procedure has been followed by the respondent. The learned counsel for the respondent Zilla Parishad has strenuously defended the order of punishment dated 08.02.2011 and the impugned order delivered by the Divisional Commissioner. She submits that the Zilla Parishad has mentioned in the opening paragraph of the order of punishment as regards

the charge levelled upon the delinquent and since the charge would stand proved purely on the basis of a cursory glance to the dates and sequence of events, no further hearing is necessary. She submits that there was no *shibir* or *melawa* on 31.03.2007, the petitioner had in fact taken an advance amount of Rs.12,000/- on 31.03.2007 and the said amount was returned on 09.01.2008 after it was brought to the notice of the petitioner that he had illegally retained the amount.

14] Be that as it may, the fact remains that the respondent has not followed a procedure that it was expected to follow and the impugned order dated 08.02.2011 is an outcome of the decision of the respondent, arrived at without hearing the petitioner.

15] The learned Advocate for the Zilla Parishad submits that if the action of the Zilla Parishad is being set aside on account of having failed in following the due procedure expected to be followed, the Zilla Parishad would now follow a procedure which is required to be followed and would initiate appropriate steps.

16] The learned Advocate for the petitioner submits that since he has now retired from employment on 31.07.2012, the liberty to reopen the entire issue may not be granted. He submits that as the enquiry was commenced prior to his superannuation, though the Zilla Parishad would have the right to follow the due procedure in this regard, he would suffer an irreparable harm if they finally conclude that he is guilty of misconduct. Instead, is

willing to sacrifice the amount which would have been payable had he been entitled to the two increments for the period March 2011 till July 2012 and by depriving him of the said amount, his pensionary and retiral benefits may be recalculated treating that the punishment has been undergone as the two increments were temporarily stopped.

17] I find that the petitioner has put-forth a fair proposal, keeping in view that the two increments were temporarily stopped. He has superannuated on 31.07.2012 and if it is assumed that he has undergone the punishment, the increments could be restored notionally only for the purposes of calculating his retiral and pensionary benefits. He is waiving the deprivation of the monetary effect of such stoppage of increments from March 2011 to July 2012.

18] Though the learned Advocate for the Zilla Parishad submits that she has no instructions on this issue, it cannot be overlooked that even if the punishment imposed on the petitioner is sustained, it would still be a temporary stoppage of two increments for two years.

19] In view of the above, this petition is partly allowed. The impugned order of the Divisional Commissioner would stand modified with the following directions:-

[a] The monetary loss cause to the petitioner with the temporary stoppage of two increments, is waived.

[b] The two increments would stand notionally

restored on 31.07.2012.

- [c] The pensionary and retiral benefits of the petitioner shall be recalculated as on 31.07.2012 with the deemed restoration of the two increments and appropriate follow up action shall be undertaken by the Zilla Parishad within a period of two months, upto 31.04.2020.

(Ravindra V. Ghuge, J.)