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

WRIT PETITION NO.1312 OF 2020

Manisha D/o Damodar Satpute
Age: 39 years, Occu: Service,
R/o: At Post. Vadgaon Gupta,
Tq. & Dist. Ahmednagar … Petitioner

VERSUS

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

2. The Divisional Commissioner, Nashik
Division Nashik.

3. The Zilla Parishad, Ahmednagar
(Through its Chief Executive Officer),
Ahmednagar.

4. The Education Officer (Primary)
Zilla Parishad, Ahmednagar.

… Respondents

…

Ms. Pradnya Talekar i/b Mr. Avinash S. Khedkar, Advocate for the Petitioner
Mr. P. G. Borade, AGP for the Respondents/State
Mr. A.D. Aghav, Advocate for the Respondent Nos.3 & 4

…

CORAM : N. B. SURYAWANSHI, J.

DATE : 6th December, 2021

ORAL JUDGMENT :

. **RULE**. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The challenge raised in the petition is to the impugned punishment order dated 30-05-2019, passed by the Chief Executive Officer, Zilla Parishad, Ahmednagar, thereby imposing a penalty of stopping next one increment for a period of one year with permanent effect on the future increments.

3. The impugned order was challenged by the Petitioner by filing appeal No.85/2019 before the Additional Commissioner, Nashik, who rejected the appeal by confirming the impugned order.

4. Heard the learned advocate for the Petitioner, learned Assistant Government Pleader for the Respondents-State and the learned advocate for the Respondent Nos.3 & 4.

5. The learned advocate for the Petitioner strenuously submits that, though ostensibly the penalty appears to be a minor penalty i.e. stopping of one increment, but when the same has cumulative and permanent effect, it is in fact a major penalty which cannot be imposed without holding a departmental inquiry. In support of her contention, she

relied on the Division Bench Judgment of this Court in Writ Petition No.1/1998. She further pointed out that, the said punishment was imposed on about twenty similarly situated employees of Zilla Parishad, Ahmednagar. They all challenged the said punishment order by filing appeals before the Respondent No.2/Additional Commissioner, Nashik. As per her instructions, almost eighteen of such appeals were allowed by the Respondent No.2 by observing in Paragraph No.7 of the orders passed in those appeals that the impugned order is passed without holding departmental inquiry, which is in violation of Rule 6 of the Maharashtra Zilla Parishad District Services (Discipline & Appeals) Rules, 1964 (For short “the Rules 1964”). Five of such decisions rendered in the cases of similarly situated employees of Zilla Parishad, Ahmednagar are placed on record by the learned advocate for the Petitioner during the course of arguments. The Commissioner has quashed and set aside the order impugned in those appeals. The Petition therefore may be allowed.

6. The learned advocate for Respondent No.3 & 4 and the learned Assistant Government Pleader for Respondent Nos. 1 & 2 supported the impugned orders.

7. In Writ Petition No.01/1998, the Division Bench of this Court, in similar fact, has held thus:

“7. We have given our anxious thoughts to the various contentions canvassed by the respective counsel. In the instant case, it is not in dispute that the punishment of withholding of two increments permanently is imposed by the Disciplinary Authority. At this stage it will be appropriate to consider the law laid down by the Apex Court in the above referred judgment, particularly Para 4 which reads thus;

> “Withholding of increments of pay simplicitor undoubtedly is a minor penalty within the meaning of Rule 5(iv). But sub-rule (v) postulates reduction to a lower stage in the time- scale of pay for a specified period with further directions as to whether or not the Government employee shall earn increments of pay during the period of such reductions and whether on the expiry of such period the reductions will or will not have the effect of postponing the future increments of his pay. It is an independent head of penalty and it could be imposed as punishment in an appropriate case. It is one of the major penalties. The impugned order of stoppage of two increments with cumulative effect whether would fall within the meaning of Rule 5(v) ? If it so falls Rules 8 and 9 of the Rules require conducting of regular enquiry. The contention of Shri Nayar, learned counsel for the State is that withholding two increments with cumulative effect is only a minor penalty as it does not amount to reduction to a lower stage in the time-scale of pay. We find it extremely difficult to countenance the contention. Withholding of increments of pay simplicitor without any hedge over it certainly comes within the meaning of Rule 5(iv) of the Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words, the clock is put back to a lower stage in the time scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order by necessary implication, is that the appellant employee is reduced in his time-scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time-scale of pay as a measure of penalty. The words are the skin to the language which if pealed off its true colour or its resultant effects would become apparent. When we broach the problem from this perspective the effect is as

envisaged under Rule 5(v) of the Rules. It is undoubted that the Division Bench in **Sarwan Singh v. State of Punjab & Ors. ILE 1985 (2) P & H 193** speaking for the Division Bench, while considering similar question, in paragraph 8 held that the stoppage of increments with cumulative effect, by no stretch of imagination falls within clause (v) of Rule 5 or in rule 4.12 of Punjab Civil Services Rules. It was further held that under clause (v) of Rule 5 there has to be a reduction to a lower stage in the time-scale to pay by the competent authority as a measure of penalty and the period for which such a reduction is to be effective has to be stated and on restoration it has further to be specified whether the reduction shall operate to postpone the future increments of his pay. In such cases withholding of the increments without cumulative effect does not at all rise. In case where the increments are withheld with or without cumulative effect the Government employee is never reduced to a lower stage of time-scale of pay. Accordingly it was held that clause (iv) of Rule 5 is applicable to the facts of that case. With respect we are unable to agree with the High Court. If the literal interpretation is adopted the learned Judges may be right to arrive at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the result will be the conclusion as we have arrived at. If the reasoning of the High Court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stoppage of increments, of earning future increments in the time-scale of pay even permanently without expressly stating so. This preposterous consequences cannot be permeated. Rule 5 (iv) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law and it would be per se void. Considering from this angle, we have no hesitation to hold that the impugned order would come within the meaning of Rule 5 (v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is per se illegal".

8. The Division Bench in this judgment has taken into consideration purport of the Rules 8 and 9 of the Rules 1964. Thus, above

observations support the case of the Petitioner.

9. The petitioner has specifically averred in Para-13 of the petition that similar punishment was imposed on the colleagues of the petitioner by the impugned order dated 30-05-2019. Their appeals were allowed by the Additional Commissioner, Nashik. These contentions are not controverted by the Respondents.

The Petitioner has placed on record five copies of the orders passed by the Commissioner in appeals filed by the similarly situated colleagues of the Petitioner, challenging the similar punishment order. Their appeals are allowed on the ground that the impugned order of stopping of one increment with permanent effect was passed without following Rule 6 of the Rules 1964 and the same is without conducting departmental inquiry. Though the Petitioner raised identical challenge and is similarly circumstanced, the Petitioner's appeal is erroneously dismissed. It is not clear as to why the appeal filed by the Petitioner is not allowed on the same reasoning. The approach of the Commissioner while dismissing the appeal filed by the Petitioner appears to be arbitrary and discriminatory and on this ground also the impugned order is liable to be quashed and set-aside.

10. For the afore-stated reasons, the Writ Petition is allowed in terms of prayer clause "A". The impugned order passed by the Chief

Executive Officer, Zilla Parishad, Ahmednagar dated 30-05-2019 is hereby quashed and set aside .

11. Though the Petitioner has challenged the transfer order dated 23-06-2019, this Court is not inclined to entertain that challenge. It is however made clear that in case, any vacancy arises around Ahmednagar, the Petitioner may be considered for appointment on the said post.

12. Rule is made absolute in the above terms with no order as to costs.

(N. B. SURYAWANSHI, J.)

Sameer