

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

WRIT PETITION NO.4198 OF 2019

Ramesh S/o Gangadhar Auti,
Age : 49 years, Occu. Service,
R/o. Court Galli, Parner,
Tq. Parner, District Ahmednagar.

... **Petitioner**

Versus

1. The Chief Executive Officer,
Zilla Parishad, Ahmednagar.
2. The Additional Commissioner,
Nashik Division, Nashik.
3. The Hon'ble Minister for State,
Rural Development Department,
Mantralaya, Mumbai-32.
4. The Assistant Commissioner (Inquiry),
Nashik Commissioner Division,
Nashik.

... **Respondents**

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Mr. P. B. Shirsath, Advocate for Petitioner.
Mr. Pratik P. Kothari, Advocate for Respondent No.1.
Mr. S. P. Deshmukh, AGP for Respondents-State.

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CORAM : V. K. JADHAV, J.
DATE : 02.02.2021.

ORDER :-

1. Heard finally at admission stage by consent of the parties.

2. The petitioner is a Zilla Parishad employee. He was given a show cause notice dated 26.06.2013 by respondent No.1 / Chief Executive Officer, Zilla Parishad, Ahmednagar, alleging some misconduct with regard to preparation of bills of Water Supply Tankers during the scarcity of 2012-2013 in Parner Taluka. The petitioner has submitted his explanation to the said notice. According to him, he was discharging his duties of earlier work allotted to him in terms of the instructions of the Block Development Officer, Panchayat Samiti, Parner. However, respondent No.1 / Chief Executive Officer since not satisfied with explanation, served the petitioner with the charge-sheet dated 30.07.2013 alleging three instances of misconduct. The Assistant Commissioner (Inquiry), Nashik Division, Nashik conducted the inquiry. The petitioner has also submitted his final say-cum-explanation to the Inquiry Officer on 21.07.2014. The Inquiry Officer held the petitioner guilty of misconduct / charge No.3 and exonerated him for charge Nos.1 and 2. On the basis of this report, the respondent No.1 / Chief Executive Officer passed an order dated 19.01.2015 thereby imposing punishment of stoppage of one increment permanently. Being aggrieved by

the same, the petitioner has preferred Appeal No.8 of 2015 before the Additional Commissioner, Nashik and by order dated 20.06.2015 dismissed the said appeal. Even by order dated 14.11.2018, the Hon'ble Minister of the State has also dismissed the revision filed by the petitioner. Hence, this Writ Petition.

3. The learned counsel for the petitioner submits that the authorities below have not taken into consideration the report dated 03.07.2013 submitted by the Block Development Officer, Panchayat Samiti, Parner, wherein it is specifically mentioned that the petitioner is not responsible for any irregularity / illegality allegedly caused during the scarcity period as the petitioner was incharge of the work of Meeting Department and also working as a P. A. to the Chairman and Vice Chairman of the Panchayat Samiti. Further the respondents authorities have also not taken into consideration, the representation dated 08.05.2012 addressed to the Block Development Officer informing therein about his earlier charge of the Education Department could not be handed over to one Shri. B. M. Shelke, in terms of the transfer order dated 02.05.2012. Moreover, the additional charge of the Meeting Department

was not accepted by anyone and therefore, the petitioner handed over the charge in the inward section and informed the Block Development Officer by communication dated 26.06.2014. The learned counsel submits that though the petitioner has been exonerated for the charge Nos.1 and 2, but held guilty of charge No.3 which reads to the effect that though the petitioner was given the office order dated 02.05.2012 by Block Development Officer, Panchayat Samiti, Parner for preparation of bills of Water Supply Tankers, but the petitioner has not followed the said order and has shown negligence, thereby violating Rule 3 of the Rules of 1967. The petitioner was remained in charge of his earlier work and the said charge could not be handed over to any other employee till his transfer effected on 31.05.2014. Thus, the petitioner neither prepared the tanker bills nor the work of the scarcity department of the Panchayat Samiti, Parner which was entrusted with him. Thus, the findings of the Inquiry Officer holding the petitioner guilty of charge No.3 is bad in law and stands vitiated. Similarly, the order of punishment of stoppage of one increment permanently by Chief Executive Officer and

the confirmation thereof by respondent Nos.2 and 3 is also liable to be quashed and set aside.

4. The learned counsel appearing for respondent No.1 / Chief Executive Officer, Zilla Parishad, Ahmednagar submits that on the request made by the petitioner, by order dated 26.04.2012, he was transferred to the Education Department Panchayat Samiti, Parner and his work charge was handed over to one Mr. Shelke in respect of the work of Meeting Department and P.A. to Chairman of Panchayat Samiti, Parner. So far as the work as to the 13th Finance Commission, same was allotted to one Mr. Ghadage and by the said order, the petitioner was relieved to join the transfer place. The learned counsel submits that due to the scarcity of the water in the area in the year 2012-2013, the Block Development Officer by its order dated 02.05.2012 has allotted additional work to the employees of the Panchayat Samiti, Parner, in respect of the supply of water tankers in the area where there was shortage of water. The said work includes survey of area, submission of daily report and to prepare the bill as per log book etc. So far as the petitioner is concerned, he was given the work of preparation of bill of water tankers. The learned counsel

submits that the Assistant Commissioner, Nashik Division, Nashik has conducted the inquiry and submitted the report on 11.08.2014. As per the report, out of three charges, charge No.3 has been proved against the petitioner and as per the procedure, final show cause notice was issued to the petitioner. The petitioner has submitted his reply to the final show cause notice and after considering the same, on 19.01.2015, respondent No.1 has imposed the punishment of stoppage of one increment permanently on the petitioner. The said order was confirmed by the Appellate Authority.

5. The learned counsel for respondent No.1 submits that the petitioner was given the work in respect preparation of bills of the water tankers. It was the duty of the employee to perform the work allotted / given to them by their higher Authority / Officer and the reason put forth by the petitioner i.e. non acceptance of his earlier charge is unsatisfactory. There was no other explanation / reason for non performance of duty of the petitioner. As per the order dated 26.04.2012, the earlier charge of the petitioner was handed over to the other employees. In view of the same, the punishment as imposed is legal and proper.

6. The learned counsel for the petitioner submits that stoppage of one increment permanently is a major punishment and considering the misconduct as per charge No.3, the punishment imposed on the petitioner is disproportionate. The learned counsel submits that in the alternate, the writ petition may be considered to the extent of reducing the said punishment for stoppage of one increment temporary.

7. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, the grounds taken in the petition, annexures thereto and the reply filed by the respondent.

8. I have carefully perused the documents annexed to the petition. It is not disputed that by order dated 26.04.2012, the petitioner was transferred to the Education Department, Panchayat Samiti, Parner on his request. On perusal of the order dated 02.05.2012 Exh.F, it appears that the petitioner has taken over the charge of Education Department, Panchayat Samiti, Parner and he was given the additional charge of preparation of bills of the tankers.

9. So far as the communication dated 03.07.2013 by Block Development Officer, Panchayat Samiti, Parner to respondent No.1 / Chief Executive Officer, Zilla Parishad, Ahmednagar is concerned, the Inquiry Officer has considered the said communication. However, the Inquiry Officer has recorded specific findings that even though the petitioner has taken over the charge of the Education Department pursuant to his order of transfer on his request and even though by specific order, he was given the additional charge of preparation of bills of the tankers, under the pretext that the charge of the earlier work was not handed over to anybody, the petitioner has deliberately avoided the work of the additional charge allotted to him by order dated 02.05.2012. The findings prepared by the Inquiry Officer has been accepted by the disciplinary authority and accordingly the punishment was imposed. The said order passed by the Inquiry Officer recording the findings in the positive for charge No.3 and so also punishment as imposed by respondent No.1 / Chief Executive Officer, Zilla Parishad, Ahmednagar has been confirmed by the Appellate / Revisional Authority. There is no reason to interfere with those findings recorded by the authorities. It appears that due to

scarcity of the water in the area, the specific order was issued by the Block Development Officer, Parner giving the additional charge to the employees. So it is expected from the employees to perform the duties as per the additional charge. The said additional work was allotted to the employees considering the scarcity of the water in the area and the water was supplied to the villagers in the area by water tankers. It seems that the petitioner has not tendered any satisfactory explanation for not performing the said work as per the additional charge.

10. In view of the same, I am not inclined to reduce the quantum of punishment imposed on the petitioner. Hence, the following order :

ORDER

Writ Petition is hereby dismissed.

(V. K. JADHAV, J.)

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vmk/-