

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

WRIT PETITION NO.7399 OF 2020

Pravin Ramkrushna Tawar
Age: 38 years, Occu: Service,
R/o. Vikas Nagar, Beside Tulzabhavani Mandir,
Kalamnuri Dist: Hingoli. ...Petitioner.

Versus

1. State of Maharashtra
Through Secretary,
Rural Development and Water Conservation Department,
Mantralaya, Mumbai-32.
2. The Assistant Divisional Commissioner,
Aurangabad Division Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Hingoli.
4. The Block Development Officer,
Oundha (Nagnath), Hingoli. ...Respondents

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Mr. B.S. Shinde, Advocate for the Petitioner.
Mr. S.G. Sangle, AGP for Respondent Nos.1 & 2/State.
Mr. V. Bhavthankar, Advocate for Respondent No.3.

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**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

DATED : 31st JULY, 2021

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put-forth prayer clause-B, which reads as under:

“B. By issuing writ of mandamus or appropriate writ, order or directions, in the like nature, this Hon’ble Court be pleased

to quash and set aside second enquiry dated 27.12.2019 and further action on the basis of enquiry, conducted by the enquiry committee appointed by the Chief Executive Officer Zilla Parishad Hingoli, as it is based on the same charges, leveled against the petitioner in first enquiry, conducted by the superior officer i.e. Assistant Commissioner Aurangabad, & suspension order dt.08/09/2020 and for that purpose issue necessary orders.”

3. We have considered the strenuous submissions of the learned counsel representing the respective parties. Keeping in view the order that we intend to pass, we are not required to advert to the entire submissions of the learned counsel. Suffice it to say that, the petitioner was issued with a charge sheet along with covering letter dated 02.04.2019, at Annexure-2. Pursuant, to the said charge sheet, an enquiry was conducted. By report dated 14.10.2019, the Enquiry Officer concluded that all the three charges leveled upon the petitioner have not been proved. Consequent thereto, the disciplinary authority - respondent no.3, CEO Zilla Parishad, Hingoli issued a second show cause notice by stating that the evidence recorded before the Enquiry Officer indicates that the petitioner has violated Rule-3 of the Maharashtra Zilla Parishad Service (Conduct) Rules, 1967 and therefore, by considering the provisions under Part-III, clause-iv (i to iv) of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 he was proposing a punishment to be awarded to the petitioner.

4. However, things did not rest here. After the petitioner submitted a reply on 28.11.2019, the Additional CEO Zilla Parishad, Hingoli constituted a three members committee for initiating an

investigation. By report dated 27.12.2019, the three members committee submitted its findings to the Additional CEO in which it was recommended that a detailed enquiry be initiated against all those persons who *prima facie* appear to be at fault. This is branded as a second enquiry, before us. The petitioner was suspended as he was, *prima facie*, held to be guilty.

5. It is no longer debatable that if an employee is subjected to a departmental/domestic enquiry as is prescribed by the service rules and if he is exonerated by the Enquiry Officer, the enquiry cannot be abandoned only to initiate a second enquiry in the same cause. In the case in hand, we do not find that the employer Zilla Parishad has initiated a second enquiry as is prescribed under the 1964 Rules. We are, therefore, not concerned with the three members enquiry committee attempting to deal with the conduct of the petitioner. We are concerned with the fact that the Enquiry Officer has exonerated the petitioner of all the three charges leveled upon him vide the charge sheet mentioned above. The Hon'ble Apex Court has held in ***Canara Bank and Others Vs. Swapan Kumar Pani and Another, (2006) 3 SCC 251*** and this Court has taken a similar view in ***Vernon Coelho Vs. Institute of Hotel Management, Catering Technology and Applied Nutrition, Mumbai and Another, 2014 (1) Mh.L.J. 139, Chattu Jathan Vs. Bombay Dock Labour Board and Others, 1996 (2) Mh.L.J. 530*** and in an unreported judgment dated 26.10.2018 delivered by this Court in Writ Petition No.8523 of 2015 filed by Muzaffar Hussain Mansoori Vs. The Union of India and others and connected matters, that a second enquiry in the same charges cannot be initiated.

6. Considering the above, the entire issue turns upon the communication dated 19.11.2019 issued by the CEO Zilla Parishad /disciplinary authority addressing the petitioner as to why he should not be punished since the charges leveled upon him are, in his view, proved though the Enquiry Officer has exonerated him of all the charges. We find that the CEO has not followed the law correctly, though his action of issuing a communication to the petitioner stating that he finds that the charges are proved, is technically correct. What was supposed to have been done by the CEO was to prepare a detailed show cause notice referring to those portions of the evidence recorded in the enquiry which, according to his analysis, proved all or some of the charges against the petitioner. By setting forth such analysis by referring to the evidence in details, he should have brought it to the notice of the petitioner as to which are the pieces of evidence which establish his guilt. Thereafter, he should have called upon the petitioner to show cause as to why he should not be punished for those misconducts which, in the view of the disciplinary authority, are proved on the basis of the evidence recorded in the enquiry. Since this has not been done and as this is permissible in law, we would be permitting the CEO Zilla Parishad to take recourse to this approach.

7. The learned advocate for the petitioner has brought to our notice that, based on the preliminary report submitted by the three members committee, the petitioner has been suspended pending disciplinary action. Though the petitioner approached this Court on 20.10.2020, which is after one year of such report and though this Court did not grant any interim protection to the petitioner, no further action has been initiated against the petitioner. In fact, the suspension has been

revoked and the petitioner has been reinstated in service.

8. In view of the above, this petition is partly allowed. We restrain the Zilla Parishad from initiating any action against the petitioner based on the preliminary report of the three members committee.

9. As the employer is prohibited from abandoning an enquiry, since the charge-sheeted employee has been exonerated, so as to take recourse to a second enquiry, we would be permitting the CEO Zilla Parishad to follow the due process of law as discussed herein-above, so as to issue a second show cause notice to the petitioner based on the findings and evidence recorded in the enquiry, provided he discusses the evidence which in his view prove the charges against the petitioner. This would enable the petitioner to note as to which pieces of evidence have been utilized against him. Thereafter, the petitioner would be at liberty to submit his reply which would be followed by disciplinary action by the employer as is prescribed under the 1964 Rules.

10. Rule is made partly absolute in the above terms.

(S.G. MEHARE. J)

(RAVINDRA V. GHUGE, J)