

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

930 WRIT PETITION NO.3739 OF 2022

NARAYAN JANARDHAN GOPALGHARE
VERSUS

THE ADDITIONAL DIVISIONAL COMMISSIONER 2 AND OTHERS

Advocate for Petitioner : Mr. S. R. Kedar
AGP for Respondents State: Mr. S. R. Yadav
Advocate for Respondents 2 & 3 : Mr. P. D. Suryawanshi

CORAM : RAVINDRA V. GHUGE, J.

DATE : 25th March, 2022

ORDER:

1. The petitioner is aggrieved by the order of punishment dated 20.05.2019 issued by the employer thereby directing stoppage of one increment permanently as punishment for having remained unauthorizedly absent for, two months. He also challenges the order of the Additional Divisional Commissioner-2, Aurangabad dated 16.11.2021 passed in Appeal No. DB/Appeal.Cell-93/2019, vide which, his appeal has been dismissed.

2. The learned Advocate for the Zilla Parishad fairly submits that the Additional Divisional Commissioner has wrongly mentioned that the petitioner was suffering from spine injury. Actually he was diagnosed with Hepatitis A. He was medically examined by the doctor who is MBBS, DGO.

3. The learned Advocate representing the Zilla Parishad has strongly supported the impugned order. The learned AGP also supports the impugned order.

4. It cannot be lost sight of that the Hon'ble Supreme Court has held in Kulwant Singh Gill vs. State Of Punjab, 1990 SCR, Supl. (1) 426 that the stoppage of one increment permanently, which would have cumulative effect on the future earnings of the employees, amounts to a major punishment which cannot be awarded without conducting a departmental enquiry. It is an undisputed position in this case that a departmental enquiry was not conducted against the petitioner.

5. In view of the above, this petition is allowed in terms of prayer clause (B) which reads as under:-

“(B) By quashing and setting aside the impugned judgment and order dated 16.11.2021 passed by the Additional Divisional Commissioner-2, Aurangabad in Appeal No. DB/Appeal.Cell-93/2019 by quashing and setting aside the order dated 20.05.2019 issued by the respondent no.3 and for that purpose may kindly be issue necessary orders.”

6. Consequently, for the present, the Zilla Parishad shall reimburse the amount which was unpaid to the petitioner on account of imposition of the punishment till today.

7. The Zilla Parishad is at liberty to follow the due procedure of law for conducting a departmental enquiry, if so advised.

(RAVINDRA V. GHUGE, J.)