

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

WRIT PETITION NO.13942 OF 2021

Smt.Surekha w/o Anandrao Kalshetti,
Age : 47 years, Occupation : Household,
R/o Nandgaon, Post. Nandgaon,
Tq.Tuljapur, Dist. Osmanabad.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through : The Additional Divisional
Commissioner, Aurangabad Division,
Aurangabad.
2. The Chief Executive Officer,
Zilla Parishad, Osmanabad,
Dist. Osmanabad.
3. The Child Development Project Officer,
Integrated Child Development Service
Scheme, Project – Murum (Alur),
Tq. And Dist. Osmanabad.

...RESPONDENTS

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Advocate for the Petitioner : Shri Santosh N. Patne
AGP for Respondent 1 : Shri A.A. Jagatkar
Advocate for Respondents 2 and 3 : Shri Suhas B. Ghute Patil

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 31st January, 2022

ORAL JUDGMENT :

1. This Writ Petition is instituted by the petitioner being

aggrieved by the two orders; first being passed by the Chief Executive Officer, Zilla Parishad, Osmanabad on 25.09.2012 dismissing her from the post of the “Anganwadi Sevika” and the second order being passed by the Divisional Commissioner, Aurangabad on 30.04.2019 in appeal upholding the order of the Chief Executive Officer.

2. Heard the learned counsel for the respective parties. Since the consensus is expressed by the parties to argue the writ petition finally, issue RULE. Rule is made returnable forthwith and heard finally by the consent of the parties.

3. The petitioner came to be appointed as the “Anganwadi Sevika” in Anganwadi No.173 at village Nandgaon, Taluka Tuljapur, District Osmanabad, by order dated 23.06.1993. Her claim is to the effect that she rendered satisfactory services and even she was recipient of honorary certificates for excellent work, which has been placed on record along with the petition. Assertion of the petitioner is that she was always efficient and capable and possessed unblemished record without any single complaint being lodged against her.

4. It is the contention of the petitioner that on 23.07.1999, the Deputy Chief Executive Officer, Zilla Parishad, Osmanabad, issued the show cause notice to the petitioner intimating her that an enquiry was conducted as regards distribution of green-peas by the Child Development Officer and as per the said report, the mother of the petitioner was caught

red handed by the villagers of village Nandgaon while carrying green-peas to Solapur for sale. She was found to be in possession of 120 kilogram of green-peas and on her interrogation, she had admitted that she had indulged in sale of commodity. Further, when the Child Development Officer visited the Anganwadi, he made the report that 57 kilogram of green-peas and 11 kilogram of rice was found in the Anganwadi, which was above the stock.

5. In the wake of the aforesaid reports, the Deputy Chief Executive Officer, Zilla Parishad, Osmanabad, called upon the petitioner to submit an explanation as to why an action should not be initiated against her. The petitioner responded to the said show cause notice and denied the allegations levelled against her by specifically contending that her mother was doing business of grocery items as well as food items on small scale and the Police Patil and the Sarpanch of the village have made complaints against her mother with an ulterior motive as the Police Patil tried to develop illicit relationship with the petitioner, but when she did not concede to his ill will, her mother was falsely implicated. Allegations were also levelled against the Child Development Officer to the effect that he was hand in gloves with the Police Patil and the Sarpanch and prepared the false report.

6. Final show cause notice was again issued to the petitioner on 02.08.1999 and she submitted her written statement on 10.08.1999

explaining adverse circumstances alleged in the notice. It is the contention of the petitioner that in utter ignorance of her defence filed against the accusations faced by her, respondent No.2/ CEO terminated her services by order dated 13/16.08.1999, removing her as “Anganwadi Sevika” from 20.08.1999 and she was directed to handover the charge.

7. Perusal of the order dated 13/16.08.1999 placed at Exhibit E to the petition, reveals that the enquiry was conducted into the affairs of distribution of the green-peas received under the “Anganwadi Purak Poshan Ahaar” scheme through the Child Development Officer, Integrated Child Development Project, Tuljapur and the show cause notice was issued to the petitioner and her explanation was sought for. Her explanation tendered on 10.08.1999 was not found to be satisfactory and therefore, her services came to be terminated.

8. The petitioner preferred an appeal by invoking Rule 13 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 (for short “the Rules of 1964”) before the Divisional Commissioner and also filed an application for stay. In the appeal, the Commissioner vide order dated 01.06.2012 partly allowed the appeal filed by the petitioner by quashing and setting aside the order dated 16.08.1999 passed by the Chief Executive Officer and the proceedings came to be remanded back to the Chief Executive Officer for conducting an appropriate enquiry. The said direction came to be issued by recording the finding that before

imposing major penalty as contemplated under Rule 4 of the Rules of 1964, it was necessary to conduct a formal departmental enquiry and since the same was not conducted, the order of the Chief Executive Officer cannot be sustained and the same was, therefore, set aside.

9. Upon the matter being remanded to the Chief Executive Officer, he reiterated the earlier order dated 16.08.1999 by recording that the report of the Child Development Officer dated 15.07.1999 clearly reflected that the charge against the petitioner stands proved. The Chief Executive Officer also referred to various other complaints against the petitioner resulting into the issuance of the show cause notice and he also made a reference to the report of the Child Development Officer based on the actual inspection of the Anganwadi where, excess stock of green-peas and rice was found. The Chief Executive Officer recorded that on 23.07.1999, the show cause notice was issued to the petitioner and she responded to the said notice on 26.07.1999, but since her explanation was not found to be satisfactory, the final show cause notice was issued to her on 02.08.1999 and this was also responded by her by submitting her say on 10.08.1999. Recording that the petitioner denied the allegation only by saying that the action initiated against her is on account of politics in the village, the said explanation offered by the petitioner cannot be considered. The Chief Executive Officer has further recorded in his order that the petitioner was employed on honorarium in the Child

Development Project Scheme and therefore, the provisions of the Rules of 1964 are not applicable to her. However, after giving adequate opportunity to the petitioner to meet the charges/ accusations against her and on consideration of her response, the termination order issued on 16.08.1999 was found to be just and proper.

10. The petitioner again approached the Divisional Commissioner by filing an appeal and by recording that the petitioner remained absent during the proceedings, the appeal came to be dismissed in default on 20.12.2017. This appeal came to be restored and adjudicated on merits by the appellate authority i.e. Divisional Commissioner, Aurangabad on 30.04.2019 and this time, the appeal filed by the petitioner is rejected and the order passed by the Chief Executive Officer, Zilla Parishad, Osmanabad, is confirmed.

It is this order which is ultimately challenged in the present Writ Petition.

11. It is not in dispute that the petitioner was appointed as the Anganwadi Sevika and she is not an employee of the Zilla Parishad nor was she appointed on any permanent post making her entitle to claim regular pay scale. On her appointment as Anganwadi Sevika in Anganwadi No.173 at village Nandgaon, she was entitled only for fixed honorarium and therefore, she could not claim to be a permanent employee of the Zilla Parishad. Upon her misconduct being proved through the enquiry

conducted against her and brought to the notice of the Chief Executive Officer, in order to follow the principles of natural justice, the allegations levelled against her, which were outcome of the enquiry, were put to her and an opportunity was afforded to her to refute the same. However, since the explanation offered by her was not found to be satisfactory as against serious charge of she being acting in connivance of her mother in selling the food grains/ commodity being made available to the Anganwadi for nourishment of children in Anganwadi, her justification was rejected. Since she was appointed on honorarium, her services as Anganwadi Sevika were put to an end.

12. True it is that in order to provide a remedy to the Anganwadi Sevkas, the Government had directed their grievance to be redressed by preferring an appeal to the higher authority i.e. the Divisional Commissioner. However, the argument of the petitioner that the full fledged departmental enquiry ought to have been initiated against her and in absence of which, the impugned order cannot be sustained, is fallacious argument and cannot be accepted.

13. Pertinent to note that Rule 1 of the Rules of 1964 does not apply to the petitioner. Rule 1 reads thus:-

“1. Short title, application and commencement-

(1) These rules may be called the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964.

(2) They apply to all Parishad servants who are members of

the District Services, except those who are part-time servants of Zilla Parishads or those who are paid from out of contingencies only.

- (3) *These rules shall, in respect of allocated employees, come into force on the date of their final publication in the Official Gazette, and in respect of other employees, on the appointed date.”*

14. Since the petitioner is not a member of the District Services nor she is a part time servant of the Zilla Parishad, the benefit of Part III of the Rules of 1964 including the provision for following a procedure prescribed under Rule 6 for imposing major penalty, cannot be invoked in favour of the petitioner. The Rules of 1964 being applicable only to the Parishad servants, who are the members of the District Services and the petitioner not being falling in the aforesaid category, cannot claim benefits of the Rules of 1964.

15. In fact, in the first round of litigation, the Divisional Commissioner has fallen into a grave error in setting aside the order of termination of the petitioner as Anganwadi Sevika and remitted the matter back to the Chief Executive Officer, Zilla Parishad, Osmanabad, for conducting an enquiry, but the Chief Executive Officer has rightly arrived at the conclusion that the Rules of 1964 are not applicable to the petitioner and before terminating her services, the principles of natural justice have been followed by making her aware of the allegations levelled against her by the Department and she was afforded an opportunity to

meet those allegations by submitting her reply and this was done on two occasions. Considering this to be sufficient compliance of the principles of natural justice, the Chief Executive Officer reiterated his earlier action of terminating the services of the petitioner, who was found involved in gross act of misconduct.

16. In the second round, the Divisional Commissioner has rightly turned down the appeal of the present petitioner by upholding the order of the Chief Executive Officer and by holding that mandate of conducting a departmental enquiry cannot be held applicable to the present petitioner, who is not a permanent employee of the Zilla Parishad and since she is not a member of the District Services, the impugned order cannot be set aside on the ground that there was no full fledged enquiry conducted against the petitioner before passing the impugned order of termination.

17. The contentions of the petitioner in support of the petition are, therefore, without any merit and substance and the impugned orders cannot be said to be suffering from any legal infirmity. Necessarily, by upholding the impugned orders, the Writ Petition is dismissed. Rule is discharged.