

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

910 WRIT PETITION NO.10685 OF 2022

**JANKA ANANDA DEVKAR
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS**

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Advocate for Petitioner : Mr. Pratik Bhosle h/f.
Mr. Avinash S. Khedkar
AGP for Respondent – State : Mr. S.P. Deshmukh
Advocate for Respondent Nos.4 to 6 : Ms. S.M. Zaware

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CORAM : SANDEEP V. MARNE, J.

DATE : 14-10-2022

PER COURT :

. The petitioner has filed the present petition challenging the order passed by the Chief Executive Officer, Zilla Parishad, Ahmednagar on 22.06.2020 imposing the penalty of reduction to the lowest stage in the pay-scale as well as the order dated 07.12.2021 passed by the Additional Divisional Commissioner rejecting her appeal.

2. In the disciplinary proceedings, the petitioner faced three charges. In the first charge, it was alleged that the petitioner assaulted another teacher Smt. Sayyed Akelabi Aamirbhai by entering into the class IV. In the second charge, it was alleged that the

petitioner used to avoid teaching duties by indulging into household works and engaging in conversations on mobile during her duty. In the third charge, it was alleged that the petitioner has erroneously engaged one Smt. Yogita Gade for teaching duties without obtaining prior approval of the superior officials. In the disciplinary enquiry, five witnesses were examined. Though the petitioner was offered an opportunity to cross-examine witnesses, it appears that she has not cross-examined them. The Enquiry Officer gave his report dated 11.02.2019 holding that all the charges levelled against the petitioner are proved. The Chief Executive Officer of Zilla Parishad has thereafter passed order dated 22.06.2020 holding the petitioner guilty of all the charges and has imposed penalty of reduction to the minimum of pay scale. The petitioner preferred appeal before the Additional Divisional Commissioner, which has been turned down by the order dated 07.12.2021.

3. Mr. Pratik Bhosle h/f. Mr. Avinash S. Khedkar, learned advocate for the petitioner submits that it was the petitioner, who was in fact assaulted by the concerned teacher Smt. Sayyed Akelabi Aamirbhai and that the petitioner suffered severe injuries on her head which is documented by the Medical Certificate. He relies upon FIR lodged by the petitioner against Smt. Sayyed Akelabi Aamirbhai

which has resulted in lodging of a criminal prosecution against that teacher. He submits that instead of punishing Smt. Sayyed Akelabi Aamirbhai, the petitioner was unnecessarily embroiled in the disciplinary proceedings and punished. He further submits that the petitioner is held guilty on the basis of solitary testimony of Smt. Sayyed Akelabi Aamirbhai, who in fact had assaulted the petitioner. He therefore submits that it would be dangerous to rely upon her testimony in such circumstances. With regard to the rest of the charges, Mr. Bhosle submits that no material was furnished to the petitioner in support of the charges. The findings are therefore termed as perverse and the order of penalty is sought to be set aside.

4. Ms. S.M. Zaware, the learned counsel for the respondent - Zilla Parishad supports the order passed by the Chief Executive Officer.

5. Mr. S.P. Deshmukh, the learned AGP for the State Government supports the order passed by the Additional Divisional Commissioner.

6. I have gone through the report of the Enquiry Officer and find that sufficient evidence is available for holding the petitioner guilty, particularly charge no.1, which to my mind is of a serious

nature. It does appear from the report of Enquiry Officer that the petitioner herself sustained injuries in the incident. However, there is sufficient evidence which indicates that it was the petitioner who approached Smt. Sayyed Akelabi Aamirbhai in the Class - IV and assaulted her. There is an evidence on record that the petitioner banged the head of Smt. Sayed.

7. In the light of this evidence appearing on record in respect of charge no.1, I do not find that the findings recorded in respect of charge no.1 can be termed as perverse.

8. So far as the other two charges are concerned, there is sufficient evidence on record to hold the petitioner guilty of those charges as well. But even if charge nos.2 and 3 were to be momentarily ignored, charge no.1 to my mind was serious in nature to inflict penalty that has been imposed on the petitioner. I therefore do not find that there is any error in the impugned order of penalty dated 22.06.2020. The appeal of the petitioner therefore has been rightly rejected by the Additional Divisional Commissioner.

9. However, there is only one matter in respect of which interference by this Court might be warranted. Perusal of the penalty

order dated 22.06.2020 indicates that the Chief Executive Officer has not indicated any period during which penalty would operate. It is trite that penalty of reduction of pay or withholding of increments cannot operate for an indefinite period. It is necessary for the Disciplinary Authority to indicate the period during which the penalty would operate. The Chief Executive Officer has also not indicated as to whether the penalty is with cumulative effect or not. Therefore, it is not known whether the penalty would have permanent effect or not.

10. Ideally, if the penalty is found to be erroneous, the matter is required to be remanded back to the Disciplinary authority for imposing the correct penalty. However, considering the fact that the substantial period has passed from the date of incident, instead of remanding the matter to Chief Executive Officer for specifying period of penalty, I deem it appropriate to direct that penalty imposed on the petitioner shall be operational for a period of 5 years from the date of penalty, after which the pay of the petitioner would stand restored. With these directions, the Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)