

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

WRIT PETITION NO.1867 OF 2019

Nihal Ahmed Gulam Ahmed Pathan

... Petitioner

Versus

The State of Maharashtra Through
the Secretary Rural Development and
Water Conservation Department Mantralaya
Mumbai – 32 & Others

... Respondents

...

Mr. V. P. Latange, Advocate for the Petitioners
Mr. S. N. Kendre, AGP for Respondent Nos.1 & 2/State
Mr. C. D. Biradar, Advocate for Respondent Nos.3 & 4

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 5th September, 2022

PER COURT :-

1. Challenge in this petition is to the order passed by respondent no.2/ Additional Commissioner, Aurangabad dated 08-06-2018 in Appeal No.10/2013, thereby stopping one increment of the petitioner with permanent effect.

2. Facts which are not in dispute are that, the petitioner was appointed on 22-12-2006 as a Teacher with respondent no.4/Zilla Parishad. The petitioner since wanted to prosecute B.Ed course, he submitted an application dated 07-08-2010 through proper channel for study leave. Again an application was made by the petitioner on

27-09-2010 seeking permission to attend B.Ed as regular candidate. There was no response to the said application of the petitioner. The petitioner was given provisional admission to the B.Ed course in Adyapak Mahavidyalaya, Khultabad. The petitioner attended B.Ed course as a regular candidate. The petitioner informed to the Block Education Officer, Khultabad that he has admitted to B.Ed course by letter dated 18-10-2010. The petitioner again sought permission to complete his B.Ed course. The petitioner completed B.Ed course during the period from 18-10-2010 to 10-04-2011, as a regular student. The petitioner, thereafter, applied to the Education Officer to allow him to join the duty and to sanction his study leave for the period during which he has completed B.Ed course. The petitioner was allowed to join the duty on 14-04-2011 vide order dated 02-09-2011.

3. A departmental inquiry was initiated against the petitioner for non-attendance of duty for the period during which the petitioner completed B.Ed course and after completion of the departmental inquiry, by order dated 13-06-2012, respondent no.3 directed that the period of 175 days from 18-10-2010 to 10-04-2011 should not be counted for pensionary benefits and stopped two annual increments of the petitioner temporarily with effect on future increments.

4. The petitioner challenged the order passed by respondent no.3 by filing Appeal No.10/2003 before respondent no.2. The petitioner contented in appeal that similarly situated employees like petitioner were also on leave without permission, but their absence was condoned and they were permitted to prosecute study and respondent no.2 has set aside punishment awarded to them. The petitioner also relied on Government Resolution dated 27-08-2003 in support of appeal.

5. The respondent no.2 partly allowed the appeal filed by the petitioner and set aside the order passed by respondent no.3 and directed to stop one annual increment of the petitioner with permanent effect. This order is impugned by the petitioner in the present petition.

6. Having heard the learned Advocate for the petitioner and learned Advocate for respondent nos.3 & 4 at length and on perusing the record, it is clear that the petitioner has completed B.Ed course without obtaining prior permission and without obtaining sanctioned leave. The learned Advocate for the respondent nos.3 & 4 pointed out that names of colleagues which are referred by the petitioner during the course of appeal, were granted permission to do the B.Ed course externally. It is further pointed out that as per Maharashtra Civil Services (leave) Rules

1981, the leave can be sanctioned to the employee if he has completed minimum five years service. Admittedly, in the present case, the petitioner has not completed five years service when he joined the B.Ed course without prior permission and without sanctioned leave.

7. Perusal of the impugned order, reveals that a lenient view is taken by respondent no.2/Additional Commissioner and one increment of the petitioner is stopped with permanent effect.

8. Taking into consideration the facts of the present case, this Court is of the view that the punishment imposed on the petitioner by respondent no.2/Additional Commissioner is proportionate to the misconduct alleged against the petitioner. No case is made out by the petitioner to interfere in the impugned order. The writ petition, being devoid of merit, is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]

Sameer