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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2274 OF 2020**

Sanjay Chandrakant Malve

....Petitioner.

V/s

The State of Maharashtra
through Secretary

Rural Development Department & Ors.

.... Respondents.

Mr. Suryajeet P. Chavan for the Petitioner.

Mr. P.P. Pujari, AGP for Respondent Nos.1 to 3.

Mr. S.R. Ghanavat i/b Pankaj P. Deokar for Respondent Nos. 3 and 4.

CORAM: NITIN W. SAMBRE, J.

DATE : AUGUST 12, 2022

P.C.:

1] In 1993, Petitioner was appointed as Assistant Teacher with Respondent No.3 – Zilla Parishad. It is claimed that a surprise visit was carried out in the School at Vanzarwadi, Taluka Daund, District Pune on 21/12/2012. As the Petitioner has failed to cooperate with the Committee, which has carried out surprise visit and acted in non-cooperative manner, he was issued show cause notice on 02/01/2012 on the grounds that the Petitioner was negligent in discharging his duty as Assistant Teacher, insubordination and violation of Rule 3 of

the Maharashtra Zilla Parishad District Service (Conduct) Rules, 1967.

In response to the said show cause notice, issued by Block Development Officer, Petitioner after having submitted his explanation, was served with an order of suspension on 12/01/2012 pursuant to the provisions of Maharashtra Zilla Parishad (Discipline and Appeal) Rules, 1964.

2] In the preliminary inquiry, since it was noticed that Petitioner was negligent in discharge of his duty, a charge-sheet was served on the Petitioner levelling in all six charges which are as under:-

Charge No.1	:	To cause educational loss to School Children.
Charge No.2	:	Not observing discipline and time of school and as a result thereof, school is getting disgraced.
Charge No.3	:	To behave arrogantly with School Evaluation Squad and also with villagers.
Charge No.4	:	To show negligence and carelessness to School Educational syllabus and projects.
Charge No.5	:	To show total negligence to evaluation and progress of school.

Charge No.6	:	To violate Rule No.3 in the Maharashtra Zilla Parishads District Service (Conduct) Rules, 1967.
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3] Petitioner thereafter submitted his detail explanation to the said charge-sheet on 27/06/2014. Inquiry Officer examined statements of Shri S.K. Avhad, Extension Officer (Education), Headquarter, Pune who was also the presenting officer, Petitioner, subject experts Shri R.B. Takle, Shri S.I. Pathan, Shri Chandrakant Waghmare, Education Extension Officer Shri Memane P.S., Central Coordinator Shri V.M. Shinde, Central Head Shri Baban Atole, so also erstwhile Central Head Shri Narayan Bhadale. Presenting Officer Mr. Avhad who was Extension Officer has submitted material in support of charges levelled against the Petitioner on 4/6/2014. Inquiry Officer submitted his inquiry report on 7/8/2014 with observation that charge Nos. 1, 3 and 5 are completely proved, whereas Charge Nos. 2, 4 and 6 are partially proved.

4] Based on above, Respondent No.3 – Chief Executive Officer on 27/11/2014 issued show cause notice intimating that charges were

duly proved against the Petitioner. As such, he was called upon to explain why he should not be compulsorily retired from services.

5] It appears that Petitioner alleged to have not submitted his explanation to the aforesaid and was accordingly served with an order of compulsory retirement on 12/3/2015. Petitioner feeling aggrieved preferred an appeal before Additional Commissioner, Pune Division, Pune. Said appeal also came to be dismissed vide impugned order dated 31/07/2017.

6] Petitioner thereafter feeling aggrieved, preferred a Revision under Rule 21 of the Maharashtra Zilla Parishad, District Service (Discipline and Appeal) Rules, 1964 before the State Government which appeal was dismissed vide order impugned dated 5/3/2019. As such, this Petition.

7] The first and foremost contention of the Counsel for the Petitioner is, in the very same proceedings of surprise visit, charge-sheet was served on in-charge Headmaster Shri Vinod Pandurang Kadam. Said Shri Kadam was similarly proceeded against by the

Respondent-Employer by holding departmental inquiry and accordingly he was awarded similar punishment of compulsory retirement on 29/7/2015. The appeal of said in-charge Headmaster Shri Kadam was partly allowed by the Additional Commissioner, Pune Division, Pune on 6/4/2018 and punishment imposed was substituted with the punishment of bringing him on the lowest pay-scale. It is brought to my notice that in Revision before the State Government, the said employee on similar set of charges was exonerated and was granted reinstatement with continuity of service vide order dated 20/8/2019. As such, it is claimed that the Petitioner is treated unequally amongst the equals, thereby violating very principle of Article 14 of the Constitution of India. His further contentions are, though the statement of Chief Executive Officer is taken into account, same was not made available to the Petitioner and as such there was denial of opportunity of hearing to the Petitioner. He would further urge that the report of the Inquiry Officer suffers from non-application of mind as the Inquiry Officer has failed to consider the material on record in an analytical manner. From the contents of the Inquiry Report, it is claimed that Inquiry Officer in a stereotype manner has recorded rival contentions and without analysing the same

has recorded finding of proving of the charges partially or in entirety against the Petitioner. As such, it is claimed that order of compulsory retirement passed by Respondent No.3 and confirmed by Additional Commissioner and the State Government is not sustainable. Further contentions are, charges levelled against the Petitioner are vague. He would invite my attention to Rule 3 of the Maharashtra Zilla Parishad, District Service (Conduct) Rules, 1967. According to him, though the allegations of want of integrity are levelled, no material is brought on record to substantiate the same.

8] Counsel for Respondents Mr. Ghanavat and Mr. Pujari would support the order impugned. According to them, strict rule of evidence and pleadings is not applicable to the departmental proceedings. According to them, once Respondent No.3-Employer has applied his mind to the entire material and has awarded punishment of compulsory retirement, same cannot be re-appreciated and substituted by any other punishment. According to them, claim of violation of Article 14 in the matter of order passed by the State Government in favour of in-charge Headmaster Mr. Kadam will be of hardly any consequences as nature of charge against both i.e. in-

charge Headmaster and the Petitioner varies. As such, it is claimed that Petition is liable to be dismissed which is preferred against the concurrent findings.

9] I have appreciated aforesaid submissions.

10] At the outset, it is required to be noted that Inquiry Officer has considered all the six charges against the Petitioner to be partially or completely proved. Duty of the Inquiry Officer while authoring the Inquiry Report is to consider the charge, material available on record in support of such charge against the delinquent like the Petitioner, explanation of the delinquent and evidence, if any brought on record by the delinquent and upon analysis of the same record finding as to whether charge is proved partially or in entirety. With the assistance of respective Counsel, I have perused the entire Inquiry Report. Inquiry Officer on the one hand has considered the material in support of the charge placed on record by the Chief Executive Officer. He has further proceeded to consider the explanation tendered by the Petitioner to each of the charges. However, without analysing as to the nature of charge, evidence brought on record by each of the

parties, analysis as to the evidence and rival claims in relation to the said charge has straight away proceeded to record finding that charge is proved either partially or in its entirety. Such act on the part of the Inquiry Officer is not at all permissible in law and same is in violation of principles of natural justice. Inquiry Officer is a quasi judicial authority who has to act independent of the employer, as he cannot be termed as a representative of the Disciplinary Authority i.e. Respondent No.3. In the present case, the Inquiry Officer appears to have acted in aid of the Disciplinary Authority as it has not at all considered and dealt with the evidence brought on record. Inquiry Officer while conducting domestic/departmental inquiry is required to adhere to the principles of natural justice and to follow the given procedure. The object of compliance of principles of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice. Quasi judicial authority is required to act in good faith, without bias and unarbitrary manner. Approach on the part of the Inquiry Officer in the matter of authoring inquiry report is nothing short than unreasonable approach of accepting claim of Disciplinary Authority. Inquiry Officer in the case in hand has failed to act as an independent adjudicator and has in a stereotype manner proceeded to

record finding that charges levelled against the Petitioner are proved partially or in its entirety.

11] Inquiry Officer, in my opinion, was duty bound to arrive at truth by analysing rival claims in the form of pleadings and evidence brought on record which he has failed to. As such, it appears that claim put-forth by the Counsel for the Petitioner that Inquiry Officer has acted in a bias manner is required to be accepted. In support of the aforesaid observations, reliance can be placed on the judgment of the Supreme Court in the matter of *Union of India and Others vs. Ram Lakhan Sharma* reported in **(2018) 7 SCC 670**.

12] This takes me to the very first contention of the Counsel for the Petitioner i.e. treating the Petitioner unequally amongst equals. He has also invited my attention to the order of the State Government passed in revisional jurisdiction in favour of Shri Vinod Kadam based on inquiry report dated 11/2/2014. It appears from the record that the said delinquent was charged with identical charges and was awarded similar punishment of compulsory removal from service on 29/7/2015. It appears that nature of evidence against said Shri

Kadam was similar to that of present Petitioner and Respondent No.3 has passed similar order against him of compulsory removal from service. Appellate Authority has partially modified the same, whereas revisional authority in its order dated 20/8/2019 has exonerated the said Officer of very similar charges which were levelled against said Shri Kadam who was also present in the School at the time when the surprise visit was carried out. As such, aforesaid factual matrix justifies claim of the Petitioner that the Petitioner is equally placed like that of in-charge Headmaster Shri Kadam. The Petitioner and in-charge Headmaster are found to be in same class. In spite of above, without there by any intelligible differentia, said Shri Kadam, in-charge Headmaster, is granted reinstatement with full back-wages, whereas Petitioner is treated unequally by maintaining punishment of compulsory retirement. As such, for aforesaid reasons, orders impugned are not sustainable.

13] In the backdrop of aforesaid observations, orders impugned dated 5th March, 2019 passed by Respondent No.1 in Revision Application No.579 of 2018, dated 31st July 2017 passed by Respondent No.2 in Appeal No.8 of 2016 and dated 12th March, 2015

passed by Respondent No.3 are hereby quashed and set aside and the Applicant is directed to be reinstated in service. Revision Application of the Petitioner is partly allowed. In the result, following order is passed:-

ORDER

- (i) The Revision Application of the Applicant Shri Sanjay Chandrakant Malve is partly allowed.
- (ii) Applicant's two annual increments are permanently withheld in view of proportion and nature of the charges proved against the Applicant.
- (iii) The period of suspension of the Applicant from the date 12.01.2012 till first 6 months, is considered as suspension period and the entire suspension period thereafter, is regularized as the duty period for all purposes as per Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign service and Payments during Suspension, Dismissal and Removal from Service) Rules, 1981 and the entire salary and allowances for the said period should be paid to him (by adjusting the subsistence allowance paid to him).
- (iv) Moreover, "the period of absence from duty" during the period from the date of Order dated 12/03/2015 of the Chief Executive Officer, Pune, to retire the Applicant compulsorily till his reinstatement in service as per the Order of this Court passed today i.e. on

12/8/2022 should be considered as qualified service for all purposes of pension. However, no benefits of pay and allowances of whatsoever nature shall be admissible for the said period, as per the principle of “No work, No pay”.

- (v) This Order should be implemented within one month, as per Rule 22.
- (vi) The entry of the said Order should be made in the service book of the Applicant.

14] Petition is allowed in the aforesaid terms and disposed of.

(NITIN W. SAMBRE, J.)