

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3117 OF 2021

Asma Parveen Naeemoddin

Assistant Teacher, Zilla Parishad Urdu
 Primary School, Kandli, Tq. Achalpur,
 Dist. Amravati.

.. Petitioner

Versus

1. State of Maharashtra, Through its
 Secretary, Rural Development
 Department Mantralaya, Mumbai – 032

2. Divisional Commissioner,
 Amravati Division, Amravati

3. Chief Executive Officer,
 Zilla Parishad, Amravati.

4. Education Officer (Primary)
 Zilla Parishad Amravati,
 Dist. Amravati.

5. Block Education Officer,
 Panchayat Samiti, Achalpur,
 Distt. Amaravati.

.. Respondents

Mr. R. J. Mirza, Advocate for petitioner

Mr. M. G. Rathi, Advocate for respondent Nos.3 and 4

Mr. K. L. Dharmadhikari, AGP for respondent Nos. 1 and 2

CORAM : MANISH PITALE, J.

DATE : 25/04/2022

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally with
 the consent of the learned counsel appearing for the rival parties.

(2) By this writ petition, the petitioner has challenged order dated 09.12.2020, passed by the respondent No.3 i.e. Chief Executive Officer of Zilla Parishad, Amravati, whereby the petitioner was transferred from Kusum kot to Dharani in District Amravati and a minor penalty was imposed on her of withholding one annual increment without having any effect on future increments. This is the second round of litigation initiated by the petitioner before this Court.

(3) The material on record shows that the petitioner, who is working as an 'Assistant Teacher', had applied under the Husband Wife Unification Scheme of the respondents for being posted at the place where her husband, who also works as an 'Assistant Teacher', is posted, claiming that the distance between the place where the petitioner was working was more than 30 kms. away from the place of posting of her husband and this satisfied the requirement of the aforesaid Scheme for moving such an application. On the basis of the representation made by the petitioner, she was transferred from Yesurna to Kandli by order dated 28.05.2018. Thereafter, action was proposed to be initiated against the petitioner on the ground that the aforesaid claim of distance between the two places being beyond 30

kms was a false claim made on behalf of the petitioner. Upon notice being issued to the petitioner, she filed a detailed reply/ representation dated 03.07.2018, stating that her claim regarding the distance between the two places being more than 30 kms. was correct. It was submitted that as per the scheme the distance is to be calculated between two Schools. She relied upon certificates issued by the Public Works Department, Achalpur, the Nagar Panchayat, Yesurna and Chief Executive Officer, Nagar Parishad, Achalpur, to contend that the actual distance between the two Schools was 37 kms. and that therefore, there was no question of any false claim being made on the part of the petitioner. Copies of the certificates issued by the said authorities were annexed with the reply/representation.

(4) Despite the aforesaid material placed on record, by an order dated 18.07.2018, the respondent No. 3 issued an order transferring the petitioner from Kandli to Kusum kot, which according to the petitioner was punitive transfer and a penalty was imposed on the petitioner withholding one increment with permanent effect. Aggrieved by the same, the petitioner filed an appeal before the respondent No.2-Divisional Commissioner, Amravati. The said

respondent modified the order passed by the respondent No. 3, to hold that withholding of one increment would not have permanent effect. The petitioner was constrained to file Writ Petition No. 8586 of 2018, before this Court to challenge the orders passed by respondent Nos.2 and 3. The aforesaid writ petition was taken up for consideration alongwith writ petitions filed by similarly situated employees. This Court, by judgment and order dated 09.07.2019, found that there was violation of Rules 6 and 7 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules 1964 (For short 'the aforesaid Rules'). Accordingly, the writ petition was allowed, as consequence of which the orders passed by respondent Nos. 2 and 3 were set aside. The respondent No. 3 was granted liberty to take action against the petitioner in accordance with law.

(5) It was thereafter that the respondent No.3 proceeded further in the matter, leading to the impugned order dated 09.12.2020, whereby, as noted above, the petitioner stood transferred from Kusum kot to Dharni and the penalty was imposed withholding one increment with temporary effect without affecting future increments. The petitioner claimed that even in the second round,

there was violation of the aforesaid Rules and the material placed on record on behalf of the petitioner was not considered by respondent No.3. Therefore, she filed appeal before respondent No.2 Divisional Commissioner. But, by the impugned order dated 25.01.2021, the appeal was dismissed and the said order dated 09.12.2020, passed by the respondent No. 3, was confirmed. The petitioner filed the present writ petition, challenging the said order wherein notice was issued for final disposal on 25.08.2021.

(6) Today when the petition was called out for hearing, Mr. Rathi learned counsel appearing for respondent Nos. 3, 4 and 5 submitted that there was a subsequent development in the matter, to the effect that pursuant to the process of counseling, by an order dated 08.12.2021, the petitioner now stood transferred from Dharni to Yesurna, which is a place located in plains. It is submitted that this subsequent event ought to be taken into consideration by this Court.

(7) Mr. R. J. Mirza, learned counsel appearing for the petitioner, submitted that the impugned orders deserved to be set aside for the reason that despite this Court remanding the matter back to respondent No.3, granting an opportunity to proceed in accordance

with law, even in the second round there was flagrant violation of the aforesaid Rules, thereby demonstrating that the impugned orders cannot be sustained. It is submitted that as per Rule 7 of the aforesaid Rules, the respondent No. 3 was expected to intimate the petitioner about the proposal to take action against her, alongwith a copy of statement of allegations. It was submitted that such mandatory requirement was not complied with by respondent No.3 and the impugned order dated 09.12.2020 was passed.

(8) It is further submitted that while the hearing in the said matter was conducted on 18.01.2020, the impugned order was passed after almost about 11 months on 09.12.2020. In the said order, a reference was made to the report submitted by the Block Education Officer, stating that the distance between the two places in question was only 27 kms., thereby demonstrating the falsehood of the claim made on behalf of the petitioner. It was submitted that copy of the said report was never supplied to the petitioner, thereby indicating that the impugned order deserved to be set aside on this ground also. It was submitted that the respondent No.2 Divisional Commissioner also failed to appreciate the contentions raised on behalf of the petitioner

regarding violation of mandatory procedural requirements under the said Rules and therefore, the present petition deserved to be allowed.

(9) As regards the subsequent development of the petitioner being transferred from Dharni to Yesurna, by order dated 08.12.2021, it was submitted that upon the impugned order being set aside, this Court may grant liberty to the petitioner to prefer representation before the respondent No. 3 under the Husband Wife Unification Scheme, notwithstanding the said order dated 08.12.2021, whereby, as on today the petitioner stands transferred from Dharani to Yesurna.

(10) Mr. Rathi, the learned counsel appearing for respondent Nos.3 to 5 submitted that as per the report of the Block Education Officer, it was found that the distance between the two places was 27 km., which was less than 30 Km. thereby indicating the false nature of the claim made on behalf of the petitioner. It is submitted that such false claims were made by other employees also, who suffered similar penalties. It was submitted that in so far as the allegation regarding punitive transfer was concerned, the same had become irrelevant in view of the subsequent development indicated

above. It was submitted that, since there was material before the authorities below to indicate the false nature of the claim made on behalf of the petitioner, the impugned order did not deserve interference.

(11) This Court has heard the learned counsel appearing for the rival parties and the material on record is perused. In the first round, when this Court remanded the matter by judgment and order dated 09.07.2019, a finding was specifically rendered that Rules 6 and 7 of the aforesaid Rules were violated in the case of the petitioner. Therefore, it was incumbent upon the contesting respondent Nos. 3 to 5 to demonstrate before this Court as to in what manner, in pursuance of the liberty granted by this Court, inquiry was conducted in the matter against the petitioner in strict compliance with the aforesaid Rules. The assertion on the part of the petitioner that she was never communicated a copy of statement of allegations alongwith the proposed action sought to be taken against her, has remained uncontroverted. Apart from this, the material on record indicates that the respondent No. 3 heavily relied upon the purported report of the Block Education Officer, stating that the distance between the two

places was only 27 Kms. Again, the contesting respondents were unable to satisfy this Court that a copy of the said report was indeed supplied to the petitioner, before the impugned order dated 09.12.2020 was passed.

(12) Therefore, it is clear that there was indeed flagrant violation of, not only the aforesaid Rules but also the principles of natural justice on the part of respondent No. 2. In such a situation, the parties could have been relegated to the stage where there was violation of the Rules and the principles of natural justice. But, considering the fact that this is the second round pursuant to liberty granted by this Court to respondent No. 3, it would be in the interest of justice that this Court itself considers the material on record to examine as to whether the impugned orders passed by respondent Nos. 2 and 3 are sustainable.

(13) As noted above, the contesting respondent Nos. 3 to 5 could not place material on record any material to indicate that there was compliance with Rule 7 of the aforesaid Rules. There was also nothing placed on record to indicate that the report of the Block Education Officer was ever supplied to the petitioner. Since, the said

report was the only material to proceed against the petitioner, the very basis of the impugned order dated 09.12.2020 is taken away.

(14) When the material placed on record on behalf of the petitioner, right from the beginning, pertaining to the distance between the two schools is perused, it is found that public authorities in the form of the Public Works Department as well as the Gram Panchayat and the Chief Executive Officer of Nagar Parishad, certified that the distance between the two schools was 37 kms. This material was placed on record on behalf of the petitioner at the first instance when it was alleged that she had made a false claim under the Husband Wife Unification Scheme. Neither in the first round nor in the second round leading up to filing of the present writ petition could the respondent No. 3 show that any reference was made to the said documents issued by the public authorities. Therefore, this Court is of the opinion that the only allegation leveled against the petitioner about having falsely claimed that the distance between two schools was more than 30 km., is not made out on the basis of the material on record. On the contrary, the petitioner has been able to satisfy this Court that there was sufficient material to support her claim that she deserved benefit

of the Husband Wife Unification Scheme, when the question of transfer and posting was being considered by respondent No.3.

(15) The respondent No.2 Divisional Commissioner also did not take into consideration the detailed documents and material placed on record on behalf of the petitioner. Therefore, the order of respondent No.2 dismissing the appeal is also found to be erroneous. When the whole basis of the proceedings against the petitioner is not made out, it is obvious that the penalty imposed upon her cannot be sustained.

(16) In view of above, writ petition is allowed. The impugned order passed by respondent No. 3 Chief Executive Officer, Zilla Parishad, Amravati and the subsequent order passed by the respondent No. 2 – Divisional Commissioner, Amravati, are quashed and set aside.

(17) But, at the same time, the subsequent development of the petitioner now having been posted at Yesurna by order dated 08.12.2021, in pursuance of counseling, cannot be ignored. As on today, the petitioner is serving as 'Assistant Teacher' in the school at

Yesurna, which is stated to be at 37 km. from the place of posting of the husband of the petitioner. In this backdrop, the learned counsel for the petitioner is justified in contending that liberty may be granted to the petitioner to make appropriate representation to respondent No. 3, for her claim to be posted at the place where her husband is serving, in terms of the Husband Wife Unification Scheme. As to whether there is vacancy available at the relevant place is a matter that can be examined only by respondent No. 3. Therefore, while allowing this writ petition and setting aside the impugned order, the petitioner is granted liberty to move a representation before the respondent No.3, in terms of Husband Wife Unification Scheme. If such a representation is made within two weeks from today, the same shall be decided within four weeks thereafter by respondent No.3.

(18) The writ petition stands disposed of. Rule is made absolute in the above terms.

[MANISH PITALE, J.]

Namrata