

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

WRIT PETITION NO. 3905 OF 2021

Kamlakar Tukaram Gajbhiye -- Petitioner

Vs.

Divisional Commissioner, Nagpur and others -- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N.S. Warulkar, Advocate for Petitioner
Mr. D.P. Thakare, Addl. G.P. for Respondent No.1
Smt. S.P. Giratkar, Advocate for Respondent Nos.2 to 4

CORAM : MANISH PITALE, J.

DATE : 6th APRIL, 2022

By this Writ Petition, the petitioner has challenged order dated 06/05/2021, passed by respondent No.2, whereby the petitioner was removed from service on two charges being proved against him. The petitioner was working as Graduate Primary Teacher in an establishment under the control of respondent Nos.1 and 2. The other impugned order is the order passed by respondent No.1 – Commissioner, dismissing the appeal preferred by the petitioner against the order removing him from service.

2. In the present case, enquiry was initiated against the petitioner on two charges, firstly, for unauthorized absence from

duty and secondly, for violating specific orders passed by superior officers. During the course of enquiry, the petitioner denied the charges levelled against him and material was brought on record by the petitioner as well as the authorities in respect of the charges levelled against the petitioner. The Enquiry Officer took into consideration such material and forwarded the Enquiry Report on 17/09/2019. The aforesaid Enquiry Report was taken into consideration and the petitioner was called upon to show cause as to why he should not be punished with penalty in view of the findings of the Enquiry Officer, whereby he was found guilty of both the charges. The petitioner responded to the same and thereupon, by order dated 25/06/2020, the respondent No.2 removed the petitioner from service. As noted above, the appeal filed by the petitioner was dismissed by the respondent No.1.

3. Mr. Warulkar, learned counsel appearing for the petitioner submitted that the charges levelled against the petitioner were baseless. It is submitted that the petitioner has placed on record sufficient material to show that it was in peculiar circumstances that he could not attend to his duties and that the first charge was not proved on the basis of the material on record. As regards the second charge, it was submitted that when the petitioner was prevented by circumstances beyond his control to join his duties within reasonable time, it could not be said that he had wilfully violated directions given by his superior. Apart from

this, a specific contention was raised in the context of Rule 6(6) of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964, on the ground that opportunity to cross-examine the witnesses produced on behalf of the authorities, was not granted to the petitioner and he was also not granted opportunity to lead evidence and examine witnesses to prove his defence. Attention of this Court was invited to **judgment and order dated 07/11/2019**, passed by this Court in the **Writ Petition No.6998/2018 (Manik Shravan Dukare Vs. Chief Executive Officer and another)**, wherein this Court accepted such a contention regarding violation of Rule 6(6) of the aforesaid Rules and it was held that the enquiry stood vitiated. On this basis, it was submitted that the impugned orders deserved to be set aside.

4. On the other hand, Smt. S.P. Giratkar, learned counsel appearing for the respondent No.2 submitted that a perusal of the Enquiry Report as well as the other material on record would show that sufficient opportunity was granted to the petitioner to defend his case. It was submitted that the material placed on record on behalf of the petitioner was considered by the Enquiry Officer and thereupon findings were rendered against him. Sufficient opportunity was also granted after receipt of the Enquiry Report to give an opportunity to the petitioner to show cause as to why appropriate penalty ought not to be imposed against him. According to the learned counsel for the respondent No.2 the

charges were proved on the basis of the material on record and the penalty imposed upon the petitioner was proportionate to the charges in respect of which he was found guilty. On this basis, it was submitted that the writ petition deserved to be dismissed.

5. Mr. D.P. Thakare, learned Additional Government Pleader has appeared on behalf of the respondent No.1.

6. This Court has considered the material on record. The petitioner was proceeded against in the enquiry in respect of the aforesaid charges. The material on record shows that the Enquiry Officer proceeded with the matter and took into consideration the documentary material placed on record on behalf of the petitioner as well as the respondent No.2. The Enquiry Report considers such material and conclusions are rendered against the petitioner on both the charges. Record also shows that the petitioner was granted opportunity to show cause on the question of imposition of penalty, in view of the findings rendered in the Enquiry Report and that sufficient opportunity was granted before imposing penalty. To that extent, the approach adopted by the authorities cannot be found fault with.

7. But, on the aspect of violation of Rule 6(6) of the aforesaid Rules, the learned counsel for the petitioner invited attention of this Court to the evidence of witnesses recorded on

behalf of the respondent No.2 to prove the charges against the petitioner. A perusal of the same shows that statements of such witnesses were recorded before the Enquiry Officer and they were specifically recorded in the form of chief-examination. But, there is nothing to show that an opportunity was granted to the petitioner to cross-examine the witnesses produced on behalf of respondent No.2. There is also nothing to show that the petitioner did not take advantage of any opportunity that was granted by the Enquiry Officer in that regard. The record also demonstrates that no opportunity was granted to the petitioner to produce his own witnesses in support of his defence.

8. At this stage, it would be relevant to refer to Rule 6(6) of the aforesaid Rules, which reads as under :

“6. Procedure for imposing major penalties. -

(1)

(2)

(3)

(4)

(5)

(6) The Inquiring Authority shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Parishad servant shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in person. The person presenting the case in support of charges shall be entitled to cross-examine the Parishad servant and the witnesses examined in his defence. If the Inquiring Authority, declines to examine any witness

on the ground that his evidence is not relevant or material, it shall record its reasons therefor in writing”.

9. A perusal of the aforesaid Rules shows that it is mandatory to grant an opportunity to the delinquent - employee to cross-examine the witnesses examined in support of the charges and further opportunity has to be granted to the delinquent – employee to examine witnesses in support of his defence.

10. The material on record in the present case clearly shows that the aforesaid Rule was violated, thereby vitiating the enquiry to that extent. There was violation of the aforesaid Rule and in such circumstances, as per the settled law, the order of termination of service issued in pursuance of such an Enquiry Report deserves to be set aside and the parties need to be relegated to the stage where such violation of principles of natural justice, in this case incorporated in Rule 6(6) of the aforesaid Rules, stood violated.

11. At this stage, the learned counsel for the petitioner submitted that considering the number of years of service that the petitioner had put in, the respondent No.2 to consider converting the penalty to compulsory retirement. But, the learned counsel for the respondent No.2 submitted that she has no instructions to make a statement in that regard. It was then submitted on behalf

of the petitioner that this Court could modify the penalty to a lesser penalty. But, the law in that regard is very clear that this Court in writ jurisdiction could modify or interfere with the penalty imposed upon the employee, only if it shocks the conscience of the Court or it is found to be wholly disproportionate to proven charges. In the facts and circumstances of the present case, such a special case is not made out.

12. Nonetheless, the petitioner has been able to demonstrate before this Court that Rule 6(6) of the aforesaid Rules was violated and that, therefore, limited relief can be granted to the petitioner in the present case.

13. In view of the above, the writ petition is partly allowed.

14. The impugned orders are quashed and set aside. The parties are relegated to the stage of the enquiry where Rule 6(6) of the aforesaid Rules stood violated.

15. Accordingly, the enquiry shall now proceed from the stage where the witnesses were examined by the respondent No.2 in support of the charges levelled against the petitioner. Proper opportunity, as contemplated under Rule 6(6) of the aforesaid Rules, shall be granted to the petitioner and thereupon, the

enquiry shall be concluded strictly in accordance with the principles of natural justice, as also the aforesaid Rules.

16. Considering the fact that the parties are being relegated to the aforesaid stage of enquiry, it would be appropriate that the enquiry is completed in an expeditious manner and in any case within a period of three months from today.

17. The writ petition is disposed of in above terms.

18. Needless to say, the question of back-wages and other permissible reliefs to the petitioner shall be subject to the outcome of the enquiry proceedings, in accordance with law.

19. The order passed today by this Court shall not come in the way of the petitioner to make a representation before the respondent No.2 as regards the nature of penalty.

JUDGE