

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

WRIT PETITION NO. 5798/2018

BHIMRAOJI TANBAJI KHODE
VS
THE STATE OF MAHARASHTRA AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. N.R. Raut h/f. Mr. S.N. Gaikwad, Advocate for the petitioner
Mr. S.M. Ukey, Additional Government Pleader for respondent
nos. 1 and 2
Mr. N.M. Kolhe, Advocate for respondent no. 3

CORAM : AVINASH G. GHAROTE, J.

DATED : 03/10/2022

Heard Mr. Raut h/f. Mr. Gaikwad, learned Counsel for the petitioner, Mr. S.M. Ukey, learned Additional Government Pleader for respondent nos. 1 and 2 and Mr. N.M. Kolhe, learned Advocate for respondent no. 3.

2. The petition challenges the order dated 29.01.2018 passed by respondent no. 2, challenging the order dated 27.10.2016 passed by respondent no. 3, by which after accepting the inquiry report penalty of stoppage of one increment for the period of three years has been imposed and the period of suspension has been considered as such.

3. Mr. Raut, learned Counsel for the petitioner, submits that the inquiry was initiated on as many as five charges (page 11) out of which, the petitioner was exonerated in respect of charge nos. 2, 4 and 5, but he

was held guilty in respect of charge nos. 1 and 3 on account of which, punishment has been imposed, which has been upheld by respondent no. 2. So far as, the order of respondent no. 2 is concerned, he submits that both the charges are not legally sustainable in as much as, 1st charge indicates that on 16.10.2015, the petitioner had not locked the school premises, and was guilty of misconduct under the Maharashtra Zilla Parishads District Services (Conduct) Rules, 1967. In this regard, it is submitted that, the primary responsibility of locking the school was of Head Mistress – Ku. Annapurna Parise, who on that day had gone to Zilla Parishad School, Dighi for meeting. It is submitted that there is no record to indicate that the charge was handed over to the petitioner at any point of time, so that the responsibility to close the school, could be attributed to him. It is further submitted that the evidences of Anil Thakare (PW 4) - President of the School Managing Committee as well as that of Vinod Patil (PW 5) and of Mahalle (PW 6), in fact support the petitioner.

4. In respect of charge no. 3, it is submitted that there is no provision, which requires the petitioner to continuously stay at headquarter 24/7 and it was permissible for the petitioner to stay at a reasonable distance from the school. In this context, it is submitted that the school is situated at Chikhali and the petitioner was residing at village Dapoli which was around 6 k.m. from the school and was reachable in 10 minutes and the

reason for not staying at Chikhali was want of availability of accommodation at Chikhali.

5. Mr. Kolhe, learned Counsel for respondent no. 3, is unable to point out any provision, which requires the continuous presence 24/7 by way of residence of the petitioner, at Chikhali itself, considering which, the residence of the petitioner at village Dapoli at a distance of 6 k.m. from school in question which was reachable in 10 minutes cannot be faulted with. In respect of charge no. 1, it is admitted position as is reflected from the inquiry report that there were four sets of key, one was with Anil Thakare (PW 4), one was with Sarpanch, one was with Head Mistress and one is claimed to be with the petitioner. However, perusal of the evidence of Ku Annapurna Parise - Head Mistress (PW 30), indicates, that what was expected by her was for the petitioner to take custody of the bunch of keys which was on the cupboard in the school, which would indicate the absence of any keys with the petitioner. That apart, it is not a case that the school was not locked on 16.10.2015. Rather, on the contrary, the evidence of Mahalle (PW 6) indicates, that the petitioner was worried about how to close the school and, therefore, was present in the school till 10 O'clock in the night and when, Mahalle (PW 6) had gone at the residence of Anil Thakare (PW 4), then he was told by Anil Thakare that children had given the keys to him , whereupon he alongwith Mahalle (PW 6) went to the

school and locked the school premises. He also stated that till the school premises was locked, the petitioner was in the school. This would indicate that the conduct of the petitioner was not as such which would warrant affirmation of charge no. 1. The order dated 27.10.2016, does not indicate that the evidence has been considered in the proper perspective. The order of respondent no. 2 (page 48) wraps up the entire matter in four lines in the last para of the order by merely stating that the charge nos. 1 and 3 were proved and accepted by the petitioner, which was contrary what was indicted by the inquiry report, considering which, impugned orders dated 27.10.2016 as well as 29.01.2018 passed by respondent nos. 3 and 2 respectively are hereby quashed and set aside.

6. The writ petition is allowed in the above terms. No costs.

JUDGE

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