

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

WRIT PETITION NO.3596 OF 2022

Vijay Tejrao Khedkar .. Petitioner
Age. 53 years, Occ. Service,
R/o. At Present Shevata,
Tq. Ghansawangi, Dist. Jalna.

Versus

1. The Additional Divisional Commissioner .. Respondents
Aurangabad, Dist. Aurangabad.
2. The Chief Executive Officer,
Zilla Parishad, Jalna.
3. The Educational Officer (Primary)
Zilla Parishad, Jalna.
4. The Block Educational Officer,
Panchayat Samiti, Jafrabad,
Dist. Jalna.

Mr.M.K. Bhosale h/f. Mr.A.M. Salok, Advocate for the petitioner.
Mr.K.N. Lokhande, AGP for the respondent/State.
Mr.Vaibhav Pawar h/f. Mr.S.S. Tope, Advocate for respondent Nos. 2 to 4.

CORAM : KISHORE C. SANT, J.
DATED : 20.06.2023

ORAL JUDGMENT :-

01. Heard learned Advocates for the parties.
02. Rule. Rule made returnable forthwith by consent of the parties.
03. By way of this petition the petitioner is challenging order dated 09.01.2020 in Appeal/267/2020 passed by the Chief Executive Officer, Zilla Parishad, Jalna (CEO) and confirmed by the Additional Divisional Commissioner, Aurangabad by order dated 03.05.2021 in Appeal/CR/41/2020 treating the period of suspension of the petitioner during the inquiry as leave period. The petitioner was placed under suspension by holding inquiry against him. In inquiry the petitioner came to be cleanly and honourably exonerated by report filed on 08.08.2019. Thereafter, the learned CEO accepted the said report and exonerated the petitioner. In the said order, however, he observed that out of total suspension period from 26.02.2018 to 06.02.2019 the period of suspension from 26.02.2018 to 21.08.2018 i.e. period of 177 days be treated as leave period. The petitioner challenged this order by filing appeal only to that extent. The learned Additional Commissioner, Aurangabad by the judgment and order dated 03.05.2021 has

only considered that the order was passed by giving hearing to the parties and refused to interfere with the order passed by the learned CEO and dismissed the appeal. On the basis of the order final order came to be passed by the learned CEO on 17.11.2021. Since the leave of 177 days was at the credit of the petitioner, same was treated as leave period and remaining period was considered as leave without pay. It is thus order which is under challenge before this Court.

04. The learned Advocate for the petitioner submits that in the inquiry nothing is proved against him and he is cleanly exonerated. When such report was accepted by the learned CEO and there is no discussion about as to why period of suspension is to be treated as leave period. He submits that thus discretion is exercised without any rationale. Before passing the order no separate notice was in-fact given to the petitioner and the order was passed. He submits that even the learned Additional Commissioner, Aurangabad Division, failed to appreciate the case on merits. He relies upon judgment in the case of Sharda Singh Khairunnissa Rasool Golandaj Vs. State of U.P. & Ors., reported in 2009 (5) ALL MR 953 (SC) and another judgment in the case of Smt. Khairunnissa Rasool Golandaj Vs. State of Maharashtra &

Anr., reported in 2015(3) ALL MR 287.

05. The learned Advocate for the respondent- Zilla Parishad submits that there is alternate remedy available to the petitioner under section 40 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules (Zilla Parishad Rules) and the petitioner can approach the appellate authority by relying upon Rule 40 of the Zilla Parishad Rules.

06. The learned Advocate for the petitioner submits that appeals are provided against the orders only passed under Rule 13 i.e. order imposing penalties. Since the order impugned in the present petition is not an order imposing any penalty, under Rule 13 no appeal is maintainable.

07. The learned AGP also opposes the petition for want of alternate remedy.

08. Having heard the learned Advocates for the parties, this Court finds that the learned CEO while passing the order has accepted report of the Inquiry Officer. Though the time of suspension is directed to be treated as

leave period, there is no discussion as to why said period is to be treated as leave period. When an employee is exonerated from the Department Inquiry, it is expected that the suspension period should be treated as the period spent on duty. In this case also none of the charges framed against the petitioner are proved and therefore the suspension period has to be treated as the period spent on duty. In the judgment in the case of **Sharda Shingh (Supra)** an order passed by the authority was upheld by the High Court. The order passed by the High Court was challenged to the Hon'ble Apex Court by way of SLP. The Hon'ble Apex Court on considering the SLP, quashed and set aside the order passed by the High Court. In para 9, the Hon'ble Apex Court observed that once an employee is exonerated from the Departmental Inquiry, the suspension period should be treated as period spent on duty. In the case of **Smt. Khairunnissa (Supra)** the Division Bench of this Court has clearly held that once an employee is exonerated from the charges after holding fullfledge inquiry, the period of suspension needs to be treated as the period spent on duty. Para No.29 of the said judgment is reproduced as below :-

“29. It is settled principle of law that when the Disciplinary Authority has failed to bring home the charges and there was no basis whatsoever to hold that the charges against the deceased employee were proved, there was no question of such punishment to be imposed on the deceased employee. The Supreme Court in its decision in the case 'State of West Bengal & Others Vs.

Bata Krishna Burman, (1970(3) Supreme Court Cases 612)" has held that if the charges as levelled against the employee are not proved, the consequence would be that the employee cannot be held guilty of any misconduct and that being so one would failed to understand as to how the order of suspension and only payment of subsistence allowance as disciplinary measure can at all be passed."

09. On considering all the above, it is clear in the case in hand that the learned CEO has not properly considered the law and passed the order against the petitioner to the extent of said period. In view of above discussion, this Court finds that clearly a case is made out to quash and set aside the impugned order passed by the learned CEO based on order passed by the learned Divisional Commissioner. The petition, therefore, deserves to be allowed.

10. The petition is allowed. Rule made absolute in terms of prayer clause (B) of the petition. The Authorities are expected to act within a reasonable period and to pay salary to the petitioner for the suspension period.

[KISHORE C. SANT, J.]