

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4756 OF 2023

Jandeo Navnath Mutkule
Age : 40 years, Occ : Service,
R/o at post – Shiral, Tq. Ashti,
District Beed.

..PETITIONER

Versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Dept.,
Mantralaya, Mumbai-32.
2. Zilla Parishad, Beed,
Beed
Through its Chief Executive Officer
3. Education Officer (Primary),
Zilla Parishad, Beed.
4. Dean,
Sir J J Hospital, GMC,
Mohd. Ali Road, Noorbag,
Mazgaon, Mumbai – 03.

..RESPONDENTS

....
Mr.P.V. Barde, Advocate for the petitioner
Mr.S.P. Tiwari, AGP for Respondent/State
Mr.P.D. Suryawanshi, Advocate for Respondent No.2.

.....
**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.**

**RESERVED ON : 27.04.2023
PRONOUNCED ON : 03.05.2023**

JUDGMENT (Per : Sanjay A. Deshmukh, J) :-

1. Rule. Rule made returnable forthwith and heard finally by

the consent of the parties.

2. The Petitioner has challenged the order passed by Respondent No.2 directing him either to undergo medical treatment or submit an apology.

3. The Petitioner contended that he is appointed as Teacher/Shikshan Sevak since 05.10.2005 in Akola Zilla Parishad, after considering his 40% disability of low vision.

4. Thereafter, on 03.12.2005, the Medical Board Yavatmal again certified that the Petitioner is having 40% disability of low vision. Accordingly, Unique Disability ID showing the disability to Petitioner to the extent of 40% was issued to him.

5. On 03.01.2023, Respondent No.3 Education Officer (Primary) referred the Petitioner for medical examination at Medical College Ambejogai. He was medically examined. It issued 30% disability certificate to the Petitioner on 05.01.2023. It is alleged that Petitioner had cheated by showing false disability certificate. On 23.01.2023, the Petitioner was suspended. The charge-sheet was issued against the Petitioner for disciplinary action on 16.02.2023.

6. The Petitioner has neither challenged suspension nor

disciplinary inquiry. He challenged only communication dated 06.04.2023 issued by Respondent No.2.

7. The Petitioner contended that anomaly in percentage of medical disability has occurred due to new norms issued by the Government of India under the Persons With Disabilities Act, 2016, and there cannot be any fraud at the hands of the Petitioner for receiving certificate of disability of 40% of low vision before 2016. The Respondents have illegally directed the Petitioner to undergo the medical examination before the Medical Board frequently. The Petitioner, therefore, prayed that the order and directions of the Respondents vide impugned communication and minutes of hearing dated 06.04.2023 be quashed and set aside.

8. The Petitioner submitted the disability certificates and the impugned communication dated 06.04.2023 and order passed by this Court in Writ Petition No.1519/2023 dated 24th February, 2023.

9. This Court while giving directions to the Respondents held as under :-

“5. In view of the above, the learned Advocate for the Zilla Parishad submits that, the Zilla Parishad would issue a letter addressing the Dean of the J.J. Hospital, Mumbai, along with a copy of this order, and thereafter, issue letters to the individual petitioners and the similarly placed other teachers, to attend the medical examination

by the Appellate Medical Board at the J.J. Hospital on particular dates and time.

6. In view of the above statements recorded, these petitions are disposed off. The impugned suspension orders stand set aside. It is made clear that, after the Appellate Medical Board of the J.J. Hospital, Mumbai, tenders its report in a sealed cover, addressed to the Chief Executive Officer, Zilla Parishad, and that if any teacher is found to have suffered lesser or no disability amounting to a fraud, the Zilla Parishad will be at liberty to initiate appropriate disciplinary action. The petitioners are agreeable.”

10. During the arguments, the learned Advocate for the Petitioner submits that the disability certificate issued by the Medical College, Ambejogai showing only 30% medical disability is in accordance with the new norms issued by the Government of India under the Persons With Disabilities Act, 2016, which cannot be retrospectively applied to the case of the Petitioner, who is appointed in the year 2005. He, therefore, submitted that suspension and disciplinary action against the Petitioner is not sustainable in the eye of law. He lastly submitted to allow the writ petition and set aside the impugned communication dated 06.04.2023.

11. The learned AGP submitted that it was not difficult for the Petitioner to pray apology as per the directions given by this Court. He may, if not praying for apology, undergo the medical examination again and submit the requisite disability certificate. The impugned communication is legal and valid. He prayed to dismiss the writ

petition.

12. As far as new norms of the medical examination regarding percentage of disability are concerned, those are made under the Persons With Disabilities Act, 2016.

13. Admittedly, the Petitioner is appointed on 05.10.2005 as Shikshan Sevak and from time to time he had given disability certificates to the Respondents. Therefore, it is very difficult to accept that he had committed any fraud while submitting his disability certificates. Further the norms as per provisions of the Persons With Disabilities Act, 2016 cannot be applied to the case of the Petitioner retrospectively. Therefore, action against Petitioner on the basis of alleged fraud and disciplinary action as well as suspension is not justifiable and sustainable. It causes injustice to him. The Chief Executive Officer Respondent No.2, Zilla Parishad, Beed and Education Officer, Zilla Parishad, Beed have erred in taking disciplinary action against the Petitioner, which is not sustainable in the eye of law. Hence, the disciplinary action and the letter dated 06.04.2023 deserve to be quashed and set aside. The argument of the learned AGP is, therefore, not acceptable in this regard.

14. Accordingly Writ Petition is allowed. The impugned

communication dated 06.04.2023 issued by the Respondent No.2 is quashed and set aside.

15. Rule made absolute in the above terms.

16. No order as to costs.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

sga/