

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

30 WRIT PETITION NO.7434 OF 2022

1. **Asaram Tukaram Giri,**
Age; 44 yers, Occ; Service,
R/o; Malapur, Tq. & Dist. Beed. **...Petitioner**

Versus

1. **The Additional Divisional Commissioner-2,**
Division, Aurangabad.
2. **The Chief Executive Officer,**
Zilla Parishad, Beed.
3. **The Education Officer (Primary)**
Zilla Parishad, Beed.
Tq. & Dist. Beed. **...Respondents.**

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Advocate for Petitioner : Mr.Kedar Shrimant R.
AGP for Respondent No. 1/State : Mr.K.B.Jadhavar
Advocate for Respondent Nos. 2 & 3 : Mr.Suryawanshi Prashant D.

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CORAM : KISHORE C. SANT, J.
DATE : 02.08.2023.

PER COURT :

1. Heard the learned Advocate for the parties at length.
Taken for final disposal by the consent of the parties at the
stage of admission.
2. The petitioner is working as Assistant Teacher in

Primary School, Murshadpurghat K. Jebapimpri, Taluka and District Beed. He has challenged the action taken by Respondent No. 2, the Chief Executive Officer, Zilla Parishad, Beed, by stopping his one increment with permanent effect, which is confirmed by respondent No. 1, the learned Additional Divisional Commissioner, Aurangabad, by the judgment and order dated 05.04.2022 by dismissing his appeal bearing No. DB/Appeal.Cell-54/2019.

3. The facts in short are that on 04.08.2018, at 9.45 a.m., the Senior Education Extension Officer visited the said School at 9.45 a.m. and found that the School was closed. He also found that at that time the petitioner was absent. Another teacher had also come at 10.25 a.m. A notice was therefore, issued by Respondent No. 2, the Chief Executive Officer to the petitioner, calling for his explanation as to why no action of stopping of two increments be taken against him. An explanation of the petitioner was called on the same day. By the communication dated 08.08.2018 the petitioner came to be suspended. On 09.10.2018 the petitioner made an application/representation to respondent No. 2, praying for apology for his absence. He requested to give him regular duty

by cancelling the order of suspension. Thereafter, by communication dated 01.11.2018, he sent another letter requesting to take him back in service. In the said communication he submitted that on 3.08.2018 Center incharge Mr. Wagh had earlier asked the petitioner to give bank statement and copy of Passbook of this School and for that reason he was required to go to the School Office of the Block Development Officer. In that process he could not attend the School in time and prayed for the leniency. Thereafter, again by letter dated 26.12.2018, 29.01.2019 he requested for taking him back in service. He also prayed that nearby school be given to him.

4. Respondent No. 2 thereafter, on 08.03.2019 asked the office to stop one year increment with permanent effect. It is this order that came to be challenged by the petitioner before the learned Additional Divisional Commissioner, Aurangabad. The Additional Divisional Commissioner respondent No. 1 however, rejected the appeal.

5. The main contention of the petitioner is that the stoppage of increment with permanent effect amounts to major

punishment and therefore it was necessary for respondent No. 2 to hold an inquiry first. In this case without holding any inquiry and only on the basis of an explanation, the action is taken observing that it was not found satisfactory. He further, submits that on 04.08.2018 a show cause notice was issued and explanation was also called for on the same day. It clearly shows that no proper opportunity is at all given. He submits that thus, the entire exercise is arbitrary and against the rules of natural justice. He relied on the judgment of this Court in **Writ Petition No. 981 of 2022** in the case of Sangeeta Manik Jadhav Vs. The Additional Divisional Commissioner and Others and in **Writ Petition No. 9739 of 2022** in the case of Narayan Janardhan Gopalghare v. The Additional Divisional Commissioner and 2 Others, this Court by relying on the judgment in the case of Kulwant Singh Gill Vs. State of Punjab, **1990 SCR, Supl. (1), 426** held that the stoppage of one increment permanently has cumulative effect on the future earning of the employee and therefore, it amounts to major punishment. It is further argued that since an action amount to major punishment, it cannot be awarded without conducting the departmental inquiry.

6. The learned Advocate Mr. Surywanshi, for the respondent Nos. 2 & 3 vehemently argued that once the guilt is accepted by the petitioner, then there is no need to hold an inquiry against the petitioner. Looking to the act of the petitioner it is clear that he has committed grave misconduct and therefore, the impugned order was passed by calling for an explanation. It is submitted that the petitioner could not give sufficient explanation of his guilt. Once the guilt is accepted, there is no question of holding inquiry again. He relied upon the decision reported in **2019 AIR (Supreme Court) 5581** in the case of Union of India and Ors. Vs. Rashid H. In the said case the delinquent has admitted the guilt and therefore, it was held that it was not necessary for the parties to prove the guilt of the employee. The Court has considered that an opportunity was given to the respondent to defend himself, however, such opportunity was not utilized by the employee. In that view of the matter, the the Court had accepted that order. The Tribunal however, set aside the punishment on the ground that no inquiry was held. It is on this backdrop thereafter, the Hon'ble Supreme Court allowed the SLP of the employer holding that an appropriate opportunity was given.

7. The learned AGP supports the order passed by the learned Additional Divisional Commissioner.

8. Considering the submissions and the record before this Court it is found that on 04.08.2018, the petitioner was found to be absent in the School and immediately, thereafter, a show cause notice was issued to him, calling for an explanation on the same day. Further the record shows that no proper inquiry was conducted by respondent No. 2. Mere acceptance of the guilt in an explanation cannot be taken to be sufficient to inflict a major punishment. It was necessary for respondent No. 2 to give proper opportunity even before inflicting the punishment. In an inquiry the petitioner could have shown that his absence was because of some proper work and it may not amount to misconduct. For that purpose further he could have been given an opportunity even before the inflicting the punishment. When admittedly no inquiry is held, the petitioner certainly is deprived of this opportunity.

9. In the case of **Narayan** (Supra) and **Sangeeta** (Supra), this Court has also considered this aspect. This Court finds that the petitioner has rightly placed reliance upon these two

judgments.

10. Going through the judgments cited by the learned Advocate for Respondent No. 2, it is seen that in that case in fact an opportunity was given to the employee to defend himself. It is in that case the Court held that the employee did not utilize an opportunity and therefore, his defence was not accepted lateron. In this case there is nothing to indicate that an opportunity was in fact given to the petitioner but he accepted it by mere explanation by letter dated 04.08.218. Even by the said letter it is clear that the petitioner was directed to furnish explanation immediately on the same day, without giving him time to prepare for his defence. This action thus appears to be taken in hasty manner and without affording sufficient opportunity. This Court, thus, finds that the case is made out to allow the Writ Petition. The impugned order passed by respondent No. 1 is set aside. Consequently, the order passed by respondent No. 2 is also set aside. The Writ Petition is allowed in terms of prayer Clause (B), with no order as to the costs.

(KISHORE C. SANT)
JUDGE

mahajansb/