

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

WRIT PETITION NO. 3182 OF 2022

Vasant s/o Madhavrao Kulkarni,
Age :- 68 yrs, Occ :- Retired Servicemen,
r/o Akshay Building, Wankhade Nagar,
Dabki Road, Akola 444001.

..... **Petitioner**

...Versus...

(1) State of Maharashtra,
Through Secretary,
Rural Development Department,
Bandhkam Bhavan, 25, Mezban
Path, Fort, Ballard Estate,
Fort, Mumbai,
Maharashtra 400001.

(2) Shri. Saurabh Katiyar,
The Chief Executive Officer,
Zilla Parishad, Akola,
Distt. Akola.

(3) Shri. Mangesh Kale,
Executive Engineer,
Small Irrigation Department,
Zilla Parishad, Akola.

..... **Respondents**

Mr. A. J. Thakkar with Mr. D. S. Patil, Advocates for the petitioner
Smt. K. S. Joshi, Addl. G. P. for the State/respondent 1
Mr. A. M. Tirukh, Advocate for respondents 2 and 3

CORAM : ROHIT B. DEO AND M. W. CHANDWANI, JJ.

DATE : 28-07-2023

ORAL JUDGMENT : (PER ROHIT B. DEO, J.)

Rule. Rule made returnable forthwith. With consent, petition is heard finally.

2. The petitioner is a senior citizen who superannuated from the services of Zilla Parishad, Akola on 31-7-2012 as Section Engineer.

3. The petitioner was served with charge-sheet dated 25-4-2011, the details of which we need not look into for the purpose of the present petition.

4. The admitted position on record is that the Chief Executive Officer of the Zilla Parishad has appointed the Enquiry Officer twelve years after the date of retirement, to be precise on 12-7-2022.

5. The petitioner submits that clause 3.19 of the Departmental Inquiry Rules provides that the enquiry shall be completed within a period of six months, and the maximum period of extension is one year. It is further submitted that prior approval of the superior authority is necessary for extension of the

time to conduct the departmental enquiry. The petitioner submits that the controversy stands concluded by the decision of the Hon'ble Supreme Court in *Prem Nath Bali Vs. Registrar, High Court of Delhi and another [(2015) 16 SCC 415]*. Reliance is also placed on the decision of the coordinate Bench in *Writ Petition 1557 of 2021 (Dhanraj Namdeorao Madavi Vs. The Chief Executive Officer, Z.P., Akola and ors.)* dated 4-12-2021, which relies on the decision in *Prem Nath Bali* supra.

6. Whether the period stipulated for completion of the enquiry is mandatory or directory is not a question which we are called upon to answer in the present matter. It is well settled that even if the period which is stipulated for completion of enquiry is held not mandatory, inordinate delay in completion of the enquiry, particularly when the employee has superannuated, is arbitrary and violative of Article 14 of the Constitution of India.

7. We note from the affidavit in response that after issuing the charge-sheet dated 25-4-2011, all that was done by the Zilla Parishad was to issue periodic communications dated 19-11-2013, 5-3-2014, 26-7-2018 and 19-3-2019 requesting the

Divisional Commissioner to initiate and conclude the enquiry. Surprisingly, while the earlier communications which are issued from time to time during the last twelve years requested the Commissioner to assign the enquiry to the designated enquiry officer, by the communication dated 12-7-2022 it is the Chief Executive Officer of the Zilla Parishad, who himself has appointed the Enquiry Officer. If the Chief Executive Officer is empowered to appoint the Enquiry Officer, it defies logic why the Chief Executive Officer for the last twelve years kept on communicating with the Office of the Commissioner for appointment of Enquiry Officer. Be that as it may, this aspect need not detain us.

8. We are more than satisfied that the charge-sheet issued must be quashed, in as much as, it is an admitted position of record that since last twelve years, nothing has been done, so much so that the Enquiry Officer has been appointed only by order dated 12-7-2022, presumably after receiving the notice issued by this Court in the present petition.

9. We allow the petition in terms of prayer clauses (1) and (2) which read thus :

1. Hold and declare that departmental inquiry initiated against the petitioner vide Memorandum dated 25/4/2011 is vitiated as the same has not been completed in terms of Section 3.19 of Departmental Inquiry Rules, 1991.
2. Quash the departmental enquiry initiated vide Memorandum Dt. 25/4/2011 issued by the respondent no. 2-Chief Executive Officer, Zilla Parishad, Akola. (Annexure-P2).
10. We further direct Zilla Parishad, Akola to release the entire retiral benefits including the pension or the arrears of pension, as the case may be, to the petitioner along with interest at rate of 8% per annum, within the next ninety days.
11. Rule accordingly.

(M. W. Chandwani, J.)

(Rohit B. Deo, J.)

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Digitally signed by AVINASH
YUVRAJ WASNIK
Signing Date: 03.08.2023 16:57