

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION (WP) NO.3866 OF 2018**

- 1) Syed Usman s/o Syed Ibrahim,
aged 62 years, Occ: Assistant Teacher
(Retd.), R/o Chopde Plots, Nababpura,
Ward No.4, Nandura, Tq. Nandura,
Distt. Buldana.

.... Petitioner(s)

// VERSUS //

- 1) The Chief Executive Officer,
Zilla Parishad, Buldana, Tq. & Distt.
Buldana.
- 2) The Divisional Commissioner,
Amravati Division, Amravati

... Respondent(s)

Shri A.J. Thakkar, Advocate for the Petitioner/s
Ms Hemlata Jaipurkar, Advocate h/f Shri B.N. Jaipurkar,
Advocate for the respondent No.1
Ms Shamsi Haidar, AGP for the Respondent No.2/State

**CORAM : ANIL S. KILOR, J.
DATED : 20.07.2023**

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent by the parties.

3. In the departmental inquiry conducted against the petitioner, the first charge was proved, whereas, the charge Nos.2 and 3 were partly proved. The said inquiry was initiated before the retirement of the petitioner, but continued even after the retirement of the petitioner.

4. In view of the report of the Departmental Inquiry, the Chief Executive Officer, Buldana, vide order dated 11.07.2016, held the period of suspension from 21.08.2014 to 21.05.2015 as a period under suspension and further imposed punishment of withholding one increment permanently.

5. The said order was carried in Departmental Appeal under Rule 13 of the Rules of 1964, which came to be rejected by Divisional Commissioner, Amravati, holding that after the retirement, the inquiry which was initiated before the retirement, can be continued under Rule 27(2) of the Pension Rules of 1982 and thereby, upheld the order of the Chief Executive Officer. The aforesaid orders of the Divisional Commissioner, Amravati and the

Chief Executive Officer, Buldana are the subject matter of the present petition.

6. The learned counsel for the petitioner submits as under:

(a) Rule 27(2) of the Pension Rules of 1982, permits to continue with an inquiry even after the retirement, however, in that case, the order of withholding or withdrawing the pension can only be the punishment;

(b) Punishment imposed by the Chief Executive Officer was under Rule 6 of the Rules of 1964, which does not permit to proceed with an inquiry after the retirement and further to impose any punishment to any retired person;

(c) Even if an employer intends to impose punishment, as provided under Rule 27(1) of the Pension Rules of 1982, at the time of superannuation, an intimation to that effect to the employee is necessary, which has not been given in the present case and therefore, even under Rule 27(1) of the Pension Rules of 1982, no punishment can be imposed.

7. On the other hand, the learned counsel for the Zilla Parishad/ respondent No.1 submits as under:

(a) There is no expressed provision, prohibiting to continue with an inquiry even after the retirement under Rule 6 of the Rules of 1964 and therefore, it cannot be said that there is no power to continue with an inquiry after the retirement.

(b) Under Rule 27(2) of the Pension Rules of 1982, it is provided that in the case of continuation of departmental inquiry after the retirement of the employee, a deeming fiction is given that, such employee shall be considered as in employment for the purpose of imposition of punishment. She therefore, submits that no illegality has been committed by both the authorities below.

8. In the light of the rival contentions of the parties, I have perused the record and the impugned orders:

9. Considering the controversy involved in the present matter, it would be appropriate to refer to Rule 27 of the Pension Rules of 1982 and Rule 6 of the Rules of 1964 which read thus respectively:

“27.Right of Government to withhold or withdraw pension.

(1) [Appointing Authority may], by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

(2) (a) The departmental proceedings referred to in sub-rule (1), if Instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.”

“6. Procedure for imposing major penalties. - (1) No order imposing on a Parishad servant any of the penalties specified in clauses (iv) to (vii) of Rule 4 shall be passed except after an inquiry held, as far as may be, in the manner hereinafter provided. ... ”

10. Rule 6 of the Rules of 1964 says that no order imposing any of the penalties specified in clauses (4) to (7) of Rule 4 of the Rules of 1964 on a Parishad servant shall be passed except after an inquiry may be in the manner provided under sub-rule (2) to (12) of the Rules of 1964.

11. In the above referred backdrop, it would be appropriate to refer to definition of word Parsihaad Servant used in sub-rule (1) of Rule 6 of the Rules of 1964:

“(i) “Parishad servant” means a person who is a member of a District Service and includes any such person on foreign service or whose services are temporarily placed at the disposal of any Government or local or other authority, the authority [and also any person in the service of a Government in India or an authority subordinate thereto or a local or other authority whose services are temporarily placed at the disposal of a Zilla Parishad for a District Service.]”

12. From the language of definition of word ‘Parsihad Servant’ it is evident that ‘Parishad servant’ means a person who is a member of a district service and includes any such person on foreign service or whose services are temporarily placed at the disposal of any Government or local or other authority.

13. The definition of word 'Parishad servant' does not suggest that it includes a retired or formal servant of the Parishad.

14. The learned counsel of the respondent No.1/Zilla Parishad has not point out any provisions under the Rules of 1964, permitting to continue an inquiry against any retired Zilla Parishad servant.

15. The provision i.e. Rule 27 of the Pension Rules of 1982 has been relied upon by the respondent No.1 to show that in view of deeming fiction even after the retirement, the employee against whom the inquiry is pending is deemed to be in employment.

16. There is no dispute about the above referred deeming fiction, however, under Rule 27 of Pension Rules of 1982, the only punishment can be imposed is of withholding or withdrawing pension, and not any other punishment as imposed in the present matter.

17. In the present matter, admittedly, no punishment was imposed as prescribed under Rule 27(1) of the Pension Rules of

1982 and therefore, the finding recorded by the Divisional Commissioner that the punishment is under Rule 27 of the Pension Rules of 1982, is contrary to record and as far as the punishment imposed by the Chief Executive Officer is concerned, it is without jurisdiction. In the circumstances, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The order dated 22.02.2018 passed by Divisional Commissioner, Amravati and order dated 11.07.2016 passed by the Chief Executive Officer, Buldana, are hereby quashed and set aside.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]