



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

WRIT PETITION NO. 7182 OF 2022

Vitthal S/o Madhukar Borghare
Age 57 years, Occ. Service
R/o Bandarkar Layout, Plot No. 126,
Girad Road, Umred, Tq. Umred, Dist.
Nagpur

...Petitioner

// VERSUS //

1. The Additional Commissioner, Nagpur
Division, Nagpur Office at Civil Lines,
Nagpur
2. Zilla Parishad, Nagpur through its
Chief Executive Officer, Civil Lines,
Nagpur

... Respondents

Shri A.S.Jaiswal, Senior Advocate assisted by Shri S.D.Borkute, Advocate
for the petitioner..

Shri H.D.Dubey, AGP for the respondent no. 1.

Shri I.S.Charlewar, Advocate for the respondent no.2.

CORAM : ANIL S. KILOR, J.

DATED : 6th NOVEMBER, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. The order dated 19th September, 2022 passed by the
Additional Commissioner, Nagpur Division, Nagpur in Zilla Parishad
Appeal No. 7 of 2021-22 dismissing the appeal and thereby upholding
the order dated 18th October, 2021 passed by the Chief Executive Officer,

Zilla Parishad, Nagpur, dismissing the petitioner from the service, is under challenge in this writ petition.

3. The facts in brief are as under:

The petitioner who was working as Headmaster in the Zilla Parishad Primary School run by Zilla Parishad, Nagpur was served with the chargesheet with following charges:

i) That, in support of both the caste claims; the petitioner himself and of one Mr. Prakash Mahadeo Chimurkar, by issuing the admission register extract and school leaving certificate under own signature submitted to the Scrutiny Committee showing that “Vithoba Harba” is the great grandfather and misguided the Government.

ii) The petitioner misguided the Government by submitting proposal for obtaining Scheduled Tribe Caste Validity certificate despite the caste validity certificate of his own daughter and cousin brother is of Special Backward Class Category.

iii) As per charge No.1 and 2 the applicant committing the breach of Rule (3) of the Maharashtra District Service (Conduct) Rules by deliberately preparing false documents.

4. It is pertinent to note that this was done in view of the order passed by the Caste Scrutiny Committee, vide order dated 24th January, 2020 directing the Zilla Parishad, Nagpur to initiate the departmental

proceeding against the petitioner under Rule 10(1)(2) and 11(1)(2) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes(Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and verification of) Caste Certificate Act, 2000.

5. Thereupon, the petitioner submitted his reply. However, finding it not satisfactory, an inquiry officer was appointed and the inquiry was conducted.

6. The Inquiry Officer submitted the inquiry report on 15th July, 2021 holding that all the three charges were proved. The Chief Executive Officer thereupon, issued a show cause notice to the petitioner calling explanation why he should not be dismissed from the service.

7. The petitioner accordingly submitted his explanation on 23rd September, 2021 and 27th September, 2021. Thereafter, the Chief Executive Officer vide order dated 18th October, 2021 issued the order of dismissal of the petitioner from the service.

8. Then, the petitioner filed departmental appeal under Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964, raising a challenge to the order of dismissal issued by the Chief Executive Officer, dated 18th October, 2021.

9. The Additional Commissioner, Nagpur vide impugned order dated 19th September, 2022 dismissed the appeal.

10. After going through the record and particularly from the inquiry report, it is evident that the inquiry officer has arrived at a conclusion that all the charges are proved, on the basis of findings recorded by the Caste Scrutiny Committee in a caste claim filed by the petitioner as 'Scheduled Tribe'.

11. The witnesses examined by the Zilla Parishad namely Manoj Shrihari Patil and Kalpana Pradip Rakde speak only about the duties of the Headmaster. It is pertinent to note that, they also referred to the facts recorded by the Caste Scrutiny Committee including the fact of submission of school record of Vithoba Halba by two persons namely petitioner and one Prakash Mahadeo Chimurkar in support of their respective caste claim.

12. Thus, no independent evidence was led by the Zilla Parishad to establish the charges against the petitioner.

13. As far as the charge no.2 is concerned which says that the petitioner misguided the Government by submitting tribe claim as Scheduled Tribe, whereas, his daughter and cousin claimed that they belonged to Koshti which falls in Special Backward Class category. To prove and establish the said charge sufficient material has not been produced on record to show that who has misguided the Government either the petitioner or his daughter and cousin.

14. In the circumstances, I find substance in the submission of Shri Jaiswal, learned Senior Advocate appearing on behalf of the

petitioner that both the authorities below have ignored the fact that though there is no cogent evidence available on record to establish any of the charges against the petitioner, the inquiry officer has held that all the charges are proved. I find further substance in his submission that dismissal of the petitioner is illegal.

15. Having held so, I am of the considered view that the order of Chief Executive Officer, Zilla Parishad, Nagpur and the Additional Commissioner, Nagpur needs to be quashed and set aside. Accordingly, I pass the following order.

- i. The writ petition is allowed;
- ii. The order dated 19th September, 2022 passed by the Additional Commissioner, Nagpur and 18th October, 2021 passed by the Chief Executive Officer, Zilla Parishad, Nagpur dismissing the petitioner from service are hereby quashed and set aside.
- iii. The respondent no.2 is directed to reinstate the services of the petitioner with continuity in service with full backwages.

[ANIL S. KILOR, J.]

16. At this stage, Shri Charlewar, learned counsel for the Zilla Parishad seeks permission to initiate *de novo* inquiry against the petitioner.

17. Considering the allegations and the charges levelled against the petitioner, I am of the opinion no prejudice would be caused if such permission is granted.

18. Accordingly, the Zilla Parishad is granted liberty to initiate *de novo* inquiry against the petitioner, if the Zilla Parishad, if it is permissible under the law.

[ANIL S. KILOR, J.]