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48wp2015.23

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

48 WRIT PETITION NO. 2015 OF 2023

VISHNU BHAGWANRAO ZOMBADE

....Petitioner

VERSUS

**THE ADDITIONAL DIVISIONAL COMMISSIONER 2 AND
OTHERS**

.....Respondents

Mr. S. R. Kedar, Advocate for the petitioner

Mr. P. D. Patil, AGP for the respondents/State

Mr. P. D. Suryawanshi, Advocate for the respondent Nos. 2 and 3

CORAM : KISHORE C. SANT, J.

DATE : 10th DECEMBER, 2024

P. C.

1. Heard the parties.

2. The petitioner has challenged the order passed by the learned Additional Divisional Commissioner-2, Aurangabad dated 19-08-2022 in Appeal No.DB/Appeal.Cell-53/2019 whereby the learned Commissioner dismissed the appeal of the petitioner filed against the order passed by the learned Chief Executive Officer, Zilla Parishad, Beed dated 24-09-2018.

3. After issuing show cause notice to the petitioner, the learned Chief Executive Officer had directed to stop one increment of the petitioner with permanent effect.

4. It is the case of the petitioner that on 19-03-2003 when the work of inspecting the original record of the teachers was going on, the petitioner came there in drunken condition and created chaos. The work of the inspection therefore was disturbed for sometime. The learned CEO immediately passed the order and placed the petitioner under suspension and issued notice as to why no action be taken against the petitioner. On 21-05-2018 the petitioner accepted the guilt and prayed for leniency.

5. The learned CEO was not satisfied with the immediate explanation and decided to take action. The learned CEO thereafter issued final show cause notice on 30-06-2018 specifically stating that the petitioner had come in drunken

condition and had misbehaved with the superior officers in the same manner and called for say as to why no action be taken against the petitioner. To this notice the petitioner replied on 04-07-2018 again accepting the guilt. He, thus prayed leniency be shown and henceforth he would not do the same thing. The learned CEO by taking lenient view imposed a punishment of stoppage of two increments with permanent effect. The petitioner thereafter approached the learned Commissioner by filing an appeal under Section 13 of the Maharashtra Zilla Parishad District Services (Discipline and Appeals) Rule, 1964. The learned Commissioner considered the case and found that no case is made out calling for interference. The learned Commissioner however reduced the punishment and directed to stoppage of one increment with permanent effect. It is this order which is under challenged in this petition.

6. The learned advocate for the petitioner vehemently argued that no proper opportunity was given by the respondents before imposing penalty. Penalty imposed is serious in nature.

There is no report obtained from any lab to arrive at a conclusion that the petitioner was in drunken condition. Mere acceptance of the guilt is not sufficient to come to a conclusion that the petitioner has committed misconduct. No specific charge was also framed quoting the rules under which the action is taken. He relies on the order passed by this court in writ petition No. 7434/2022 in the case of Asaram Tukaram Giri Vs the Additional Divisional Commissioner, Division Aurangabd and others. This court in the said petition had set aside the action taken by the authorities by setting aside the order passed by the learned Commissioner in an appeal. In the said case there were allegations of absenteeism against the petitioner therein. In that case also the petitioner had accepted the guilt. However, there was some explanation offered for absenteeism of the petitioner. In that view this court had formed an opinion that no proper opportunity was given and no enquiry was held. This court finds that said judgment is not applicable in the present case. In the present case allegations are serious in nature, no such misconduct by the teachers can be tolerated.

7. The learned AGP and Mr. Suryawanshi, learned advocate vehemently opposed the petition. It is submitted that after show cause notice the petitioner has clearly accepted his guilt. There was also panchanama drawn immediately after the incident on 19-03-2018. In the said panchanama it is recorded that petitioner was in drunken condition and he created chaos and disturbed the functioning of the superior officials. He submits that since there was clear acceptance of the guilt, there was no question of any enquiry. By looking his apology already a lenient view is taken and instead of stoppage of two increments the action taken is only stoppage of one increment and the learned commissioner has rightly considered the aspect and has dismissed the appeal.

8. Considering all above facts, this court finds that the no case made out calling for interference at the hands of this court. Writ petition, therefore, stands dismissed. No order as to costs.

[KISHORE C. SANT, J.]