



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5713 OF 2022

Dinkar Abhimanyu Mundhe,
Age 57 yrs., Occ. Service,
R/o Shikshak Colony, Wadwani,
Tq. Wadwani, 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.
- 4 The Block Education Officer,
Panchayat Samitee, Wadwani,
Dist. Beed.

... Respondents

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Mr. S.R. Kedar, Advocate for petitioner

Mr. N.D. Raje, AGP for respondent No.1

Respondent Nos.2 and 3 – served

Mr. P.D. Suryawanshi, Advocate for respondent No.4

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CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 30th JULY, 2024

PRONOUNCED ON : 02nd AUGUST, 2024

ORDER :

1 The petitioner impugns order dated 21.01.2022 passed by Additional Divisional Commissioner, Aurangabad in Appeal No.DB/Appeal.Cell-70/2020 as well as order dated 20.02.2022 passed by respondent No.2 – Chief Executive Officer, Zilla Parishad, Beed, thereby imposing penalty of permanently withholding of one increment and recovery of amount of Rs.21,804/- from petitioner.

2 Petitioner was appointed as Assistant Teacher under establishment of Zilla Parishad, Beed, later on promoted as Headmaster. While he was working as in-charge Headmaster at Zilla Parishad Primary School, Chinchwadgaon, Tq. Wadwani, he was served with show cause notice dated 27.12.2018 that he has illegally withdrawn amount of Rs.21,804/- and misappropriated the same. It is further alleged that petitioner has put forged signatures of President of school committee and withdrew amount. Consequently, departmental action was proposed against him. Petitioner replied said notice on 08.01.2019 explaining that on 30.05.2018 he has been transferred to Zilla Parishad school at Wadwani and he handed over charge of

Zilla Parishad school, Chinchwadgaon, however, on 14.06.2018 he had withdrawn amount of Rs.21,804/- after obtaining signature of President by consent of President and Secretary for school expenses. Bank Cashier after verification of signature, permitted such withdrawal. As such, petitioner denied misappropriation as alleged.

3 On 03.05.2019 petitioner was again served with show cause notice stating that he has illegally withdrawn amount and same is not utilized under any permissible head. Petitioner was imputed misconduct in terms of Rule 3 of Maharashtra Zilla Parishad District Services (Discipline) Rules, 1967 and called upon to show cause as to why punishment of permanent withholding of three increments shall not be imposed against him in terms of Rule 4 (2) of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. On 22.06.2019 petitioner replied the said show cause notice and submitted details of expenditure made while denying allegations of misappropriation. On 26.09.2019 petitioner was communicated that his explanation is not accepted and he was called upon to show cause as to why amount of Rs.21,804/- shall not be recovered from him and punishment in terms of Rule 4 (2) of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964, thereby withholding two increments shall not be imposed against him. It appears that petitioner failed

to reply said notice. Finally, respondent No.2 passed impugned order dated 20.02.2020 holding him guilty and imposing penalty of withholding one increment permanently and also directing recovery of amount of Rs.21,804/-.

4 Petitioner assailed aforesaid order in Appeal No.70/2020 before Divisional Commissioner at Aurangabad in terms of Rule 13 of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. Learned Divisional Commissioner confirmed the order of respondent No.2. Hence, this writ petition.

5 Mr. S.R. Kedar, learned Advocate appearing for petitioner submits that order under challenge is passed without inquiry or service of charge sheet. He would submit that penalty of withholding one increment permanently is a major penalty. Therefore, the procedure contemplated under rules for imposing major penalty ought to have been followed. Mr. S.R. Kedar would further submit that petitioner has been victimized due to political reasons. He has submitted account of expenditure. The amount was withdrawn from Bank account as directed by President and Secretary of school committee. He would further submit that there is gross violation of principles of natural justice. Consequently, he urges to quash and set aside the impugned order.

6 Having considered submissions advanced, it is apparent that in the year 2018 petitioner was working as in-charge Headmaster of Zilla Parishad Primary School at Chinchwadgaon, Tq. Wadwani, Dist. Beed. On 30.05.2018 he was transferred from said school and joined his duties at Zilla Parishad Primary School, Wadwani. As such, he was not in-charge of business of school at Chinchwadgaon after 30.05.2018. Record indicates that thereafter petitioner has withdrawn amount from Bank account of school at Chinchwadgaon. Petitioner was, therefore, served with show cause notice dated 27.12.2018 as to why departmental proceeding shall not be initiated against him and suspension order shall not be proposed. Petitioner replied said show cause notice on 08.01.2019. He admits that on 14.06.2018 he withdrew amount of Rs.21,804/-, however, with caveat that said amount is withdrawn after obtaining signature of President of school committee and withdrawal was as per instructions of President and Secretary. Consequently, inquiry was conducted through Block Development Officer, Panchayat Samitee, Wadwani, who submitted his report confirming that petitioner has withdrawn such amount on 14.06.2018 after he had left charge of school and amount is not utilized for any permissible head. Consequently, petitioner was again served with show cause notice calling upon him to explain as to why the action in terms of Rule 4 (2) of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 shall not be taken against him.

Petitioner replied on 22.06.2019 and submitted details of expenses, however, his explanation was not accepted. He was served with final show cause notice and consequential order dated 20.02.2020 has been passed, thereby directing withholding of one increment permanently.

7 Rule 4 of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 provides for various penalties to be imposed on Parishad servant. In all eight heads of various penalties are provided. Clause II of Rule 4 provides for withholding of increments or promotion. The procedure for imposing major penalty is prescribed under Rule 6. Such procedure is applicable when proposed penalty is as per Clause IV to VII i.e. reduction of rank/grade, compulsory retirement, removal from service or dismissal from service. The procedure for minor penalties is prescribed under Rule 7. Penalty of withholding increment is covered under procedure for Rule 7. It prescribes that Parishad servant has to be informed in writing of proposal to take action against him and all the allegations on which it is proposed to be taken, and he shall be given an opportunity to make representation as he may wish to take. After taking into consideration such representation by Disciplinary Authority, the Disciplinary Authority can pass further orders.

8 Procedure under Rule 7 of Maharashtra Zilla Parishad District

Services (Discipline and Appeal) Rules, nowhere contemplates for serving of charge sheet or holding of any inquiry which is the requirement for imposing major penalty as contemplated under Rule 6. In present case it is evident that petitioner was served with show cause notice containing imputation. After considering his representation he was again served with a notice of proposed penalty and given an opportunity to explain circumstances. Thereafter, the Disciplinary Authority passed order imposing penalty of permanently withholding one increment. Therefore, contentions raised on behalf of petitioner that penalty has been imposed without following due process of law cannot be countenanced.

9 On over all consideration of material on record, it can be concluded that petitioner was found guilty of withdrawing amount from Bank account, when he had already left charge of Headmaster of school and joined another school at Wadwani. Petitioner candidly admitted that he has withdrawn such amount, however, attempts to explain that such withdrawal was at the instance of President and Secretary of school committee. Such defence was not acceptable and rightly rejected by Disciplinary Authority.

10 The scope of judicial review in the matter of disciplinary inquiry is very limited. This Court will not delve in to correctness of decision, however, would examine whether procedure contemplated for imposing

penalty has been followed and principles of natural justice are observed. In present case, no fault requiring interference in writ jurisdiction has been brought to the notice of Court. Consequently, writ petition stands dismissed.

(S.G. CHAPALGAONKAR)
JUDGE

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