



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.6890 OF 2023**

Sachin Eknath Chitte,
Age: 44 years, Occu. Service,
R/o. Mondha Road Ashti (D.J.)
Tq. Partur, Dist. Jalna.

..Petitioner

Versus

1. The State of Maharashtra
Additional Divisional Commissioner,
Division Aurangabad.

2. The Chief Executive Officer,
Zilla Parishad, Jalna.

3. Education Officer, (Primary),
Zilla Parishad, Jalna.

..Respondents.

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Mr. D. R. Irale Patil, Advocate for Petitioner.

Mr. A. V. Lavte, AGP for Respondent No.1.

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

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 31st JULY 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matters is taken up for final hearing at the stage of admission.

2. The petitioner impugns the order dated 23.12.2021 passed by the Chief Executive Officer, Jalna-respondent no.2 as well as order dated 19.12.2022 passed by the Additional Divisional Commissioner, Aurangabad Division-respondent no.1 in Appeal No.12/2022.

3. Mr. Irale Patil, learned Advocate appearing for the petitioner submits that the petitioner is employed as Teacher under establishment of Zilla Parishad, Jalna. He was posted at Zilla Parishad High School, Tirthpuri. As per transfer policy

promulgated under Government Resolution dated 18.04.2013, the petitioner submitted online application for request transfer from Tirthpuri to Zilla Parishad High School, Paradh, Tq. Bhokardhan. Accordingly, he was transferred to Primary School, Paradh in Bhokardhan Taluka. However, the petitioner was never served with relieving order. The petitioner made application dated 18.05.2013 seeking withdrawal of his “request transfer”. However, cognizance of his request was not taken. The petitioner made continuous representations and finally approached this Court vide Writ Petition No.8854/2014 challenging transfer and relieving letter dated 16.05.2013. This Court disposed of Writ Petition vide order dated 06.07.2015 with direction that petitioner may apply for transfer at nearby place where his wife is transferred and in case such application is made, respondent no.1 shall take decision within a period of two months. Consequently, vide order dated 22.09.2015, petitioner was restored to Zilla Parishad School at Ghansavangi. However, when the petitioner made request to treat period from 16.05.2013 to 22.09.2015 as “in service period”, he was served with show cause notice and departmental inquiry was initiated vide statement of imputation containing five charges.

4. On conclusion of enquiry, a report was submitted holding that he is partially guilty of two charges. The petitioner was called upon to furnish his explanation as regards to the findings recorded by the Inquiring Officer. The petitioner submitted his representation, however, respondent no.2-Disciplinary Authority without application of mind passed non-speaking order to impose penalty of withholding three increments permanently and directed to treat period of absence as non-duty period (Dise Non) in terms of Government Resolution dated 02.06.2003. The petitioner approached the Appellate Authority under Rule 13 of the Maharashtra Zilla Parishad District Services (Discipline and

Appeal) Rules, 1964 (for short 'Rules of 1964'). However, the Appellate Authority without application of mind confirmed the order of respondent no.1.

5. Mr. Irale Patil further submits that Disciplinary Authority is required to follow procedure under Rules of 1964. In the present case, procedure under Rule 6 was undertaken, the definite charges were framed and inquiry was conducted, however, further procedure in terms of Rules 7, 8, 9 and 10 was not followed. Finally non-speaking order has been passed. The Appellate Authority confirmed order but on basis of charges, which are held to be not proved as per report of enquiry.

6. He submits that order passed by the Disciplinary Authority as also Appellate Authority are required to be speaking orders. In support of his contentions he relies upon the judgment of the Division Bench of this Court in case of ***Gajanan Babu Patil Vs. State of Maharashtra and Others***¹. He would further submit that when Disciplinary Authority has acted as a rubber stamp or failed to independently examine the material of inquiry and endorsed opinion of Inquiring Officer, such orders cannot be sustained in law.

7. Per contra, Mr. Suryawanshi, learned Advocate appearing for respondent nos.2 and 3 submits that the petitioner was absent from duty for more than two and half years. His transfer was effected on his request. Thereafter, he made representation to retain him at original place and absented himself from duty without leave. Considering the conduct of the petitioner, appropriate steps in tune with Rules of 1964 were taken and after following due process of law, punishment has been imposed. He would submit that considering nature of mis-conduct on the part of

¹ 2003 (1) Mh.L.J. 988.

the petitioner, grievous penalty could have been imposed, however, pragmatic view is taken and punishment of withholding three increments has been imposed and absence period is treated as non-service period. He would, therefore, submit that no interference is required in Writ jurisdiction of this Court.

8. Having considered submissions advanced on behalf of the learned Advocates appearing for the respective parties and on perusal of the material tendered into service, it can be observed that the petitioner was transferred taking into account his request from Tirthpuri to Paradh, Taluka Bhokardhan. Once such request for transfer was accepted at the place of choice, the petitioner was expected to join duties at the place of transfer. However, because of supervening events, the petitioner found the place of request transfer inconvenient for him and made representation to cancel such transfer and retain him at original place. Admittedly, the petitioner did not join his duties at the place of transfer and remained absent without authority for the period from 16.05.2013 to 22.09.2015. Petitioner also made an application to treat the said period as service period in terms of Sub-Rule 14(F) of Rule 9 of the Maharashtra Civil Services (General Condition of Services) Rules, 1981. Thereafter, the petitioner was served with the statement of imputation for five different charges. The enquiry was conducted. The petitioner was given ample opportunity to put up his defence. Finally Inquiring Officer concluded that the petitioner is partially guilty of two charges i.e. unauthorized absent from duty for the period from 16.05.2013 to 22.09.2015 and flouting orders of the superior by not joining the post on request transfer. The petitioner was served with final show cause notice in pursuance to the report of enquiry and after considering his representation, Disciplinary Authority i.e. respondent no.2 imposed penalty in terms of Rule 4(ii) of Rules of 1964 to permanently withhold three increments

and treat period from 16.05.2013 to 22.09.2015 as Dise Non. In Appeal filed under Rule 13 of the Rules of 1964, respondent no.1 confirmed the order.

9. In the present case, admittedly the petitioner was served with charge-sheet and procedure for imposing major penalty was undertaken. Rules of 1964 prescribes that the Disciplinary Authority shall, if it is not Inquiring Authority, consider the record of inquiry and record its finding of each charge and then pass further orders in terms of Sub-Rule (10) or (11) of Rule 6 and communicate such order to the delinquent. In the present case, it does not appear from record that the Disciplinary Authority has independently applied mind to the findings recorded by the Inquiry Officer against findings on each charge. The impugned order appears to be cryptic and non-speaking order. It is true that respondent no.1 while considering Appeal filed by the petitioner has recorded some reasons. However, observations of guilt recorded by appellate authority are inconsistent to findings of inquiry officer. Apparently, Disciplinary Authority as well as Appellate Authority has mechanically passed the orders without application of mind. The Division Bench of this Court in case of **Gajanan Babu Patil** (supra) observed in paragraph no.8 as under:

“8. The legal position that the disciplinary authority as also the appellate authority has to give reasoned order is always settled and has now been finally laid down by the Full Bench of this court interpreting the provisions of Maharashtra Rules regarding conduct of departmental enquiry and proceedings. This court has specifically laid down the manner in which the orders are to be passed. We introduced what has been laid down by the Full Bench suffice to say that the orders passed by the disciplinary authority as also the appellate authority required to be speaking order. As observed already the order of the disciplinary authority as also the appellate authority is not a speaking order and consequently they are not sustainable in law. Even if it is assumed in favour of the respondent that the

disciplinary authority itself being enquiring authority and it has given an enquiry report holding the petitioner guilty, no additional reasons need be given in the order of punishment. In such a case, according to law, more responsibility lies on the earlier authority to give its finding on each point raised.”

10. Considering the aforesaid observations, the impugned order cannot be sustained in law. However, since no defect in conduct of enquiry is discernible, it would be appropriate to quash and set aside the impugned orders and relegate matter to respondent no.2-Disciplinary Authority to pass reasoned order after applying mind to the report of inquiry and representation made by the petitioner to such report. Hence, the following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 23.12.2021 passed by the Chief Executive Officer, Jalna-respondent no.2 as well as order dated 19.12.2022 passed by the Additional Divisional Commissioner, Aurangabad Division-respondent no.1 are hereby quashed and set aside.
- c. The matter is remitted back to the Disciplinary Authority i.e. respondent no.2, who shall apply his mind to the findings recorded against each charge in the enquiry report and representation made by the petitioner and then pass fresh reasoned order within a period of twelve (12) weeks from the date of this decision and communicate the same to the petitioner.
- d. Writ Petition is disposed of.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE