

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12943 OF 2022

Vaijyanath Mahadev Kamble)
Age: 52, residing at Post: Abloli)
Taluka :Guhagar,)
District:Ratnagiri) ...Petitioner

Versus

1. The Divisional Commissioner,)
Kokan Vibhag, Room No. 112,)
First Floor, Kokan Bhavan,)
Room No. 112, First Floor,)
Kokan Bhavan,)
Navi Mumbai 400 614)

2. The Chief Executive Officer)
Ratnagiri Zilla Parishad)
Ratnagiri – 411 001) ...Respondents

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Mr. Saurabh Pakale a/w. Mr. Nitesh Desai i/b. S.M. Katkar, for
Petitioner.

Ms. Rupali Shinde, AGP for Respondent No.1.

Mr. Ajit Savagave, for Respondent No. 2.

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**CORAM : NITIN JAMDAR &
M.M. SATHAYE, JJ.**

DATE : 29 FEBRUARY 2024

JUDGMENT (Per M. M. SATHAYE J)

. Rule. Learned counsel for the Respondents waive service. Rule
made returnable forthwith and heard finally by consent.

2. By this petition under article 226 of the constitution of India the Petitioner is challenging orders dated 29 October 2021 and 6 April 2021 passed by the Respondent Nos. 1 and 2 respectively. By the order dated 6 April 2021 Respondent No. 2 has imposed a minor penalty upon the Petitioner by permanently withholding one salary increment and rejecting the Petitioner's prayer of revoking/condoning the period of suspension from 2 January 2018 to 4 February 2020. By the impugned order dated 29 October 2021, Respondent No.1 has dismissed the appeal filed by the Petitioner (Appeal No. 5 of 2021) under section 13(e) of Maharashtra Zilla Parishad District Service (Discipline and Appeal) Rules, 1964 (for short "the said Rules").

FACTS

3. Few facts necessary for disposal of this petition, are as under. The Petitioner was appointed as Assistant Teacher in the services of Respondent No.2 Zilla Parishad in 1996. In January 2018, based on a complaint filed by one Anganwadi Sevika – Smt. Tanishka Sawant about Petitioner's misconduct with her, the Petitioner was suspended by order dated 15 January 2018 and a disciplinary committee was constituted. Simultaneously, a criminal case (RCC No. 9 of 2018) was also filed at the instance of the said complainant/informant against the Petitioner u/s. 354 of the Indian Penal Code (assault or criminal force to woman with intent to outrage her modesty). On 14 June 2019, the Judicial Magistrate First Class at Rajapur acquitted

the Petitioner. The Petitioner approached Respondent No. 2 and prayed for quashing the disciplinary inquiry against him based on the order of his acquittal. It is contended that the Complainant also addressed a letter to Respondent No. 1 on 21 January 2019 stating that she has no grievance against the Petitioner.

4. As a result of his acquittal from the criminal case, by Order dated 23 December 2019, the Petitioner, was permitted to join services again. The Petitioner thereafter applied on 11 September 2020 for revocation/regularisation of suspension. Thereafter, the Petitioner was issued a notice dated 24 December 2020 and opportunity was given to the Petitioner for submitting a reply / explanation, which Petitioner gave on 12 January 2021. After considering the Petitioner's explanation / reply, the impugned order dated 6 April 2021 came to be passed by Respondent No. 2 refusing to revoke/regularise the suspension period and imposing minor penalty as stated above. The Petitioner filed Appeal No. 5 of 2021 challenging the said order. Respondent No.1 after considering the material produced and after considering the arguments advanced before him, dismissed the appeal by the impugned order dated 29 October 2021. It is in these circumstances that the Petitioner has approached this Court under extraordinary writ jurisdiction.

SUBMISSIONS

5. Learned counsel for the Petitioner submitted that since he has been acquitted in the criminal case and since consideration before

the criminal Court and before the disciplinary committee as well as before the Respondent authorities was one and the same, even minor penalty should not have been imposed and the period of suspension must be revoked and the same cannot be sustained post acquittal. He submitted that the complainant has not only denied the alleged incident before the Criminal Court but has also given a letter on record to Respondent No. 1 stating that the complaint was given against the Petitioner due to misapprehension and she has no grievance against the Petitioner. He submitted that in view of such a clear stand taken by the Complainant, the Petitioner's request for revocation of suspension period ought to have been allowed and no penalty should be imposed.

6. Learned counsel for Respondent No.2 - Zilla Parishad has opposed the petition. By inviting our attention to the affidavit in reply, it is submitted that owing to the complaint filed by the said complainant with the Block Development Officer, Panchayat Samiti, Rajapur and since FIR was registered against the Petitioner, the Petitioner was suspended and thereafter, charges were framed and communicated to the Petitioner. The Petitioner was given opportunity to file written statement. He submitted that inquiry officer was appointed, who has found that the Petitioner had failed to maintain absolute integrity and devotion to duty and thereby violated Rule 3 of the said Rules. He submitted that by recording specific finding, the inquiry officer has held that due to misbehavior and misconduct of the Petitioner, Zilla Parishad's image has been

tarnished. He submitted that since the Informant/ Complainant did not support the prosecution case, the Petitioner was acquitted from the criminal case but it was an acquittal under benefit of doubt. He submitted that Petitioner's acquittal is not honorable and would not amount to reversal of finding of the misconduct. He submitted that in the facts and circumstances of the case, no indulgence be shown to the Petitioner specially when all the required procedure has been followed before imposing a minor penalty. He lastly submitted that in any case, due to Petitioner's acquittal, he is reinstated in services but the minor penalty and suspension period deserves to be sustained.

REASONS & CONCLUSIONS

7. We have carefully considered rival submissions and perused the record. The Petitioner is already permitted to join the service. The question is only about revocation of the suspension period and about minor penalty.

8. We are guided by the settled principles about scope of judicial review in such cases, which are recently reiterated in the judgment of the Hon'ble Supreme Court in case of *State of Karnataka & Anr vs. Umesh*¹ dealing with the case of penalty/punishment imposed upon the delinquent employee in disciplinary proceedings. It is held by the Hon'ble Supreme Court that in the exercise of judicial review, the Court does not act as an appellate forum over the findings of the

¹ (2022) 6 SCC 563

disciplinary authority and does not re-appreciate the evidence. It is further held that acquittal of accused in criminal cases does not debar employer from proceeding in exercise of disciplinary jurisdiction. It is held that in criminal trial, burden lies on the prosecution to establish ingredients beyond reasonable doubt. However, the purpose of disciplinary proceedings is to inquire into the allegations of misconduct and such charge is to be proved on the basis of preponderance of probabilities. It is also held that rules of evidence applicable to criminal trial are distinct from those governing disciplinary inquiry.

9. It must be noted that impugned orders indicate that procedure under the said Rules has been followed and sufficient opportunity was given to the Petitioner for presenting his case. Impugned orders are passed by the authorities based on available material. There is no violation of principles of natural justice. There is no perversity or error apparent on the face of the record. The misconduct in the inquiry is held to be proved. The suspension period is found to be not revocable.

10. Perusal of the order of acquittal dated 14 June 2019 shows that the Complainant/ informant had turned hostile and the Petitioner was acquitted. It is important to note that the consideration while deciding a criminal case for an offence such as under section 354 of IPC and consideration while conducting disciplinary inquiry, are totally different. While deciding a criminal case, aspect of proof

beyond reasonable doubt is the consideration. However while deciding disciplinary action, circumstances and behavior of the persons involved and their place in the society assumes importance. The facts of the case clearly indicate that the Petitioner, being a teacher himself in the Zilla Parishad school was directly involved in a complaint of this nature where an Anganwadi Sevika - lady complainant, has accused him of misconduct and act of outraging her modesty. The incident had received coverage in media. Even though the Petitioner is acquitted from the criminal case, fact remains that the image of the Zilla Parishad and its concerned school and teachers, was indeed tarnished. Learned counsel Respondent No. 2 is right in his submission that the image of the Zilla Parishad and its employees is the central consideration here which cannot change due to the Petitioner's acquittal. In that view of the matter, the minor penalty imposed on the Petitioner is not disproportionate and even the suspension period also needs to be retained.

11. In the net result, we do not find it to be a fit case to exercise our extraordinary writ jurisdiction. No interference is called for. The petition is accordingly dismissed. Rule is discharged. No order as to costs.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)