



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

WRIT PETITION NO.7888/2019

Anant Devidas Bodkhe,
aged about 53 years, Occ. Assistant
Teacher, r/o c/o Zilla Parishad School,
Belora (Khurd), Panchayat Samiti,
Ashti, Dist. Wardha.

.....PETITIONER

...V E R S U S...

1. Hon'ble Minister of State for Village
Development, Mantralaya, Mumbai,
through its Secretary.
2. Additional Commissioner,
Nagpur Division, Nagpur.
3. Chief Executive Officer,
Zilla Parishad, Wardha.

...RESPONDENTS

Mr. P. S. Kshirsagar, Advocate for petitioner.
Mrs. M. S. Deshmukh, A.G.P. for respondent Nos. 1 and 2.
Mr. N. M. Kolhe, Advocate for respondent No.3.

CORAM:- ANIL L. PANSARE, J.
DATED :- 26.06.2024

ORAL JUDGMENT

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

Heard Mr. P. S. Kshirsagar, learned counsel for the
petitioner, Mrs. M. H. Deshmukh, learned A.G.P. for respondent
Nos. 1 and 2 and Mr. N. M. Kolhe, learned counsel for respondent
No.3.

2. The petitioner was working as Assistant Teacher in the school run by Zilla Parishad, Wardha. He was required to face inquiry for various charges, one of which was that he has assaulted the school children by means of shoes. Another charge was that he argued with Head Mistress and has committed misconduct.

3. My attention has been invited to inquiry report submitted by Assistant Commissioner, Nagpur. The report indicates that Zilla Parishad intended to examine six witnesses. Out of these six witnesses, three witnesses appeared before the Education Officer. However, they did not subject themselves to cross-examination. The report further indicates that the presenting officer has not submitted the note on charge before the Education Officer. Despite such status, the Education Officer has recorded that both the charges have been proved against the petitioner.

4. The inquiry report has been relied upon by the Chief Executive Officer (respondent No.3), without recording any finding as regards defence put forth by the petitioner of not following the principles of natural justice. The respondent No.3 proceeded to hold the petitioner guilty of the charges and accordingly has imposed punishment of withholding increments for rest of the service tenure of the petitioner.

5. This order is apparently in violation of the well settled principles of law. The persons like the petitioner cannot be condemned without giving an opportunity to cross-examine the witness. In fact the evidence of witnesses who did not subject themselves for cross-examination is itself inadmissible and no finding can be rendered on the basis of such an evidence. In that sense, the presenting officer failed to lead any evidence in support of or to substantiate the charges levelled against the petitioner.

6. The petitioner made an attempt to correct the order passed by Chief Executive Officer by approaching the appellate authority (Respondent No.2) viz. Additional Commissioner, Nagpur Division Nagpur. The Commissioner did nothing except to reiterate what has been said by the Chief Executive Officer. I have not come across any reason assigned by the Additional Commissioner as to how in the present case, the evidence of the witnesses who did not subject themselves for cross-examination, could be relied upon.

7. Similar is the fate of the proceedings before the revisional authority. The Hon'ble Minister also proceeded in an identical manner as that of the Additional Commissioner. The revisional authority also failed to take into account the most

crucial aspect of the matter that the evidence led by the presenting officer was not admissible inasmuch as the witnesses who appeared before the inquiry officer did not subject themselves to cross-examination. The evidence, therefore, was not admissible at all.

8. The orders passed by the respondent Nos. 1, 2 and 3 are against the settled principles of law and suffer from the violation of principle of natural justice. The impugned orders dated 14.11.2018 passed by Hon'ble Minister in Case No. DEN-2018/Case No.288/Estt.12, Zilla Parishad, Wardha, order dated 09.05.2016 passed by Additional Commissioner, Nagpur Division, Nagpur in Appeal No. 6/2014-15 and order dated 19.05.2014, passed by Chief Executive Officer, Zilla Parishad, Wardha in ZPW/P.E.D./ Dept.Enqu./V.Ch./1721/2014, Education Department, Zilla Parishad, Wardha are quashed and set aside.

The petitioner is entitled to the benefits of services rendered by him, which the respondent no.3 shall extend within a reasonable time.

Rule is made absolute in the above terms. No order as to costs.

(Anil L. Pansare, J.)

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