



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

914 WRIT PETITION NO. 3745 OF 2022

GURUCHARAN NARAYAN GIRI  
**VERSUS**  
THE STATE OF MAHARASHTRA AND OTHERS

Mr. K. P. Rodge, Advocate for the petitioner  
Mr. S. N. Kendre, AGP for the respondent/State  
Mr. S. S. Manale, Advocate for respondent No.3.

CORAM : R. M. JOSHI, J.  
DATE : 18<sup>th</sup> MARCH, 2025

**PER COURT :-**

1. This petition takes exception to the order dated 13/10/2021 passed by the Additional Divisional Commissioner, Aurangabad Division confirming the order dated 10/06/2020 passed by the Chief Executive Officer, Zilla Parishad, Latur imposing penalty of stoppage of two annual increments permanently against the petitioner on he being held guilty of the misconduct.

2. Petitioner claims that he was appointed as a Pharmacist and he was required to work at various places. He further contends that in around May, 2019 petitioner was not keeping good health and he had intimated about the same to the Medical Officer over phone. The Chief Executive Officer, Zilla Parishad, Latur visited the place of work of the petitioner and since he was found absent, he was forthwith suspended. A

show cause notice-cum-charge was issued against the petitioner alleging employment misconduct against him. The misconduct alleged against him included that the petitioner had remained absent unauthorizedly from 17/05/2010 to 22/05/2019, that he has not stayed at the headquarter and not complied with the orders of the Superior. Similarly, it was alleged against him that though he collected the OPD amount, the same was not deposited in the bank immediately.

3. The petitioner replied to the said charge-sheet denying the allegations. It is his case that he had orally informed about his absence to the Medical Officer. It is stated that from 17/05/2010 to 22/05/2019 he has marked his bio matrix attendance though he could not sign the muster roll. In so far as the allegation against him with regard to not staying at the headquarter, it is claimed that house rent allowance is regularly deducted from his salary and that he is staying in the headquarter in the government allotted premises. As far as non deposit of the amount receipt of OPD is concerned, it is his claimed that the said amount was not deposited immediately, however it was deposited in the year 2017 itself.

4. In the inquiry conducted against him, the charge Nos.1 and 3 are said to be proved. A show cause notice was issued to the petitioner as to why two annual increments shall not be permanently stopped. He

responded to the said show cause notice and sought examination. By order dated 10/06/2020, the Chief Executive Officer, ZP, Latur imposed punishment of withholding two annual increments with cumulative and permanent effect. Being aggrieved by the said order claim to be filed before the Additional Divisional Commissioner, Aurangabad unsuccessfully, hence this petition.

5. Learned counsel for the petitioner submits that the petitioner was able to satisfactorily explain the period of absence from 17/05/2010 to 22/05/2019. It is his submission that the Inquiry Officer has failed to take into consideration the factum of bio matrix attendance of the petitioner from 17/05/2010 to 22/05/2019. About non deposit of the OPD fees, it is his submission that the said allegation is of year 2016 and immediately thereafter in the year 2017 itself i.e. much before issuance of show cause notice and charge-sheet against him petitioner had already deposited the entire amount. It is his submission that the punishment imposed by respondent No.3 is shocking disproportionate and hence deserves interference.

6. Learned counsel for the respondents supported the impugned order. It is his submission that the punishment imposed on the petitioner is minor in nature and as such it cannot be called as shockingly disproportionate. It is his submission that even for a temporary

misappropriation, the punishment of dismissal could be justified which has not been inflicted upon the petitioner. To support his submission he placed reliance on the judgment of this Court in case of ***Ganesh Sakharkari Karkhana Ltd. Vs. Dashrath Bajirao Nirgude and Anr, 2009 BCI 2.***

7. There is no any dispute about the fact that in the domestic/ departmental inquiry, strict rules of evidence are not applicable. The employer is not required to prove the misconduct of employee beyond reasonable doubt like in a criminal trial. Having regard to the record wherein the petitioner himself has admitted to be more vigilant in signing the muster roll henceforth no fault can be found with regard to the petitioner being held guilty of the charge of absenteeism. Apart from this the charge of non deposit of the OPD fees, there is no dispute made by the petitioner about withholding of the amount at least for some time. Thus, it cannot be said that during the departmental inquiry this misconduct is not established against him. However, at the same time it needs to be considered that incident of withholding of OPD fees has occurred in the year 2016. Admittedly in the year 2017 entire amount is deposited by the petitioner. It is for next two years no action was taken against him for the said misconduct. This court finds substance in the contention of the learned counsel for the petitioner that only for the

reason that when CEO paid visit to the Primary Health Centre and at that time since the petitioner was not found at the work place, charge-sheet has been issued against him not only for the absenteeism but also for the acts done by him in the past.

8. The Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 have application to the present case, which provides for the nature of penalty to be imposed on the employees. Withholding of increments or promotion is one of the such minor penalty. Though this Court finds that it is fit case wherein minor penalty is required to be imposed against the petitioner, however, the penalty should be commensurate to the misconduct charged against him. Even if it is accepted that from 17/05/2010 to 22/05/2019 petitioner was absent, having regard to the fact that he is service since 2009, the said absenteeism would not attract to the penalty of withholding of the increments permanently. Similarly is the case with regard to the non deposit of the OPD fees. The Z.P. did not find it necessary to take any action against the petitioner for a long period of two years after he deposits the money.

9. Apart from this it needs to be considered that the penalty provided under rules does not specify withholding of the increments permanently. Even by accepting the right of the employer to withhold the

increments permanently, there ought to have been a reason recorded for imposing such penalty instead of withholding the same for a limited period. Perusal of the order impugned does not disclose any reason being recorded for the same.

10. In the fact of the case, this Court is of the view that to impose penalty of withholding two increments permanently is excessive and shocking disproportionate punishment. Hence, interference deserves to be caused to the said extent in the impugned order. Impugned order stands modified. The two annual increments of the petitioner are withhold without future/ cumulative effect.

11. Petition stands partly allowed in above terms.

**(R. M. JOSHI, J.)**

ssp