



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7507 OF 2017

Mr. Ashok s/o. Rambhau Khamkar

Age: 52 years, Occu. Service,
R/o. Ekdare Gaothan, Tq. Akole,
District: Ahmednagar.

...Petitioner

VERSUS

Chief Executive Officer,

Zilla Parishad, Ahmednagar,
District: Ahmednagar.

...Respondent

Mr.Satyajeet S. Dixit, Advocate for the Petitioner.

Smt. Kavita S. Bhale, Advocate for the Respondent/sole.

CORAM : KISHORE C. SANT, J.

DATE : 30th JANUARY 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the learned Advocates for the respective parties.
2. This writ petition is directed against the judgment and order dated 27th February 2015 passed by the learned Additional Divisional Commissioner, Nashik in EMP Appeal No.162 of 2013 by the present

petitioner. By way of impugned judgment and order, the learned Additional Divisional Commissioner, Nashik dismissed the appeal of the petitioner. The appeal was against the order dated 7th September 2013 passed by the learned Chief Executive Officer, Zilla Parishad, Ahmednagar, imposing penalty upon the petitioner of stoppage of two increments.

3. The facts, in short, giving rise to the present petitioner are as under:-

That the petitioner was working as an Assistant Teacher, Zilla Parishad, Rampurwadi, Tq. Rahata Dist. Ahmednagar. It is the case of the respondent that on 12th September 2011, the petitioner was found to have come to school in drunken condition. This was noticed in the school visit by the Block Development Officer, Panchayat Samiti, Rahata and Sarpanch of Rampurwadi village. A notice was therefore, issued on 11th October 2011. The petitioner came to be suspended. It was decided to hold the enquiry on issuing notice to the petitioner. On 6th June 2012, charge-sheet was issued to the petitioner. He was directed to give an

explanation within ten days. The charges were as below:-

(i) On 12th September 2011, it was found that the petitioner has come to school in drunken condition.

(ii) The petitioner has committed misconduct by coming to school in drunken condition.

(iii) The petitioner vomited in the school and asked the students to clean the floor. This act caused indiscipline in the administration. All the charges were in violation of Rule 3 of the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967.

4. The petitioner did not admit the charges, an enquiry was, therefore, held by the Deputy Director (Enquiry), Nashik Division, Nashik. The Deputy Commissioner submitted a report dated 23rd April 2013 on holding enquiry in examining the witnesses. The learned Deputy Commissioner submitted a report that the charges are not proved. On receipt of this enquiry report, the Chief Executive Officer again issued show cause notice to the petitioner dated 11th June 2013. It is stated in the said notice that, the respondent do not agree with the enquiry report and proposes to take action. It was directed to give an

explanation. The punishment was also proposed of stoppage of two increments as provided under Rule II of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 with permanent effect. The explanation was called within ten days. The petitioner submitted his explanation denying all the charges.

5. The respondent on receipt of the explanation passed an order on 7th September 2013 imposing penalty of stoppage of two increments with permanent effect. The petitioner therefore approached the learned Additional Divisional Commissioner, Nashik by filing an appeal by raising various grounds. The learned Additional Divisional Commissioner, Nashik however rejected the appeal of the petitioner. The petitioner has therefore approached this Court.

6. The learned Advocate for the Petitioner vehemently argued the case. He submits that when the Enquiry Officer has specifically submitted a report holding that no charges are proved still the action is taken which is arbitrary. There are no proper reasons assigned as to why the report of the Enquiry Officer was not accepted. The enquiry officer

had rightly concluded that no charges are proved, since there was no evidence on record. The witnesses who were examined could not give particulars to prove any of the charges. The learned Chief Officer however has taken all charges to have been proved without taking any further evidence. There is nothing on record to show that there was sufficient material on record to not accept the report of the Enquiry Committee. He submits that even the learned Divisional Commissioner failed to appreciate all these grounds and has drawn erroneous conclusion and dismissed the appeal. He thus prays for setting aside the order passed by the learned Divisional Commissioner and consequently, the action taken against him.

7. Learned Advocate for the Respondent vehemently argued that the petitioner was serving as a teacher which is considered to be a noble profession. The behavior and the conduct of the teacher is expected to be beyond reasonable doubts. All the witnesses examined have categorically stated about the misconduct of the petitioner. The conclusion drawn by the Enquiry Officer was not correct. He failed to appreciate that the strict evidence is not required in Departmental

Enquiry like in a criminal trial. In a Departmental Enquiry, the evidence required is probability. She submits that there was a panchnama drawn on 12th September 2011. There was also news item published in the news paper. She supports the orders passed by the authorities.

8. Considered the submissions and the material on record. Undisputedly, the enquiry report exonerated the petitioner. The Enquiry Officer did not find sufficient material to come to the conclusion that there is misconduct. When the Chief Officer issued notice asking for explanation, there are no strong reasons assigned as to why the report of the enquiry committee is not acceptable. The learned Commissioner also failed to appreciate this material aspect and has rejected the appeal. There is communication dated 2nd November 2012 by Block Development Officer to the Education Officer (Primary) Zilla Parishad that there was no FIR lodged against the petitioner and as no FIR was lodged, the petitioner was not referred for medical examination to check as to whether he has consumed alcohol. It is for this reason, the Medical Officer did not examine the petitioner. Thus on record there is no evidence to prove that the petitioner had consumed liquor. This court

finds sufficient force in the submission of the petitioner. Reliance of the respondent on panchnama drawn by the authorities and the Sarpanch though is on record, said is not supported by any evidence as it was not tested for alcohol in blood.

9. On considering all above, this Court finds that the action taken by the respondent was without any sufficient material. There was no overwhelming material to come to different conclusion than the one drawn by the Enquiry Officer. The basic fact of consumption of liquor by the petitioner in the school itself is not proved.

10. In this view of the matter, it is difficult to sustain the impugned order. The impugned order and the action against the petitioner are therefore quashed and set aside. Hence, the following order:-

ORDER

(i) Writ Petition stands allowed.

(ii) The impugned judgment and order passed by the learned Additional Divisional Commissioner, Nashik dated 27th February 2015 in EMP Appeal No.162 of 2013 are quashed and set aside.

(iii) The order dated 7th September 2013 passed by the Chief Executive Officer, Zilla Parishad, Ahmednagar in Outward No.Office-2/DE/744/2013 is quashed and set aside.

(iv) Rule is made absolute in above terms.

[KISHORE C. SANT, J.]