



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.15783 OF 2023

Dewanand S/o Shankarrao Phulware,
Age: 37 Years, Occu. Service,
A/p/Z.P.H.S. Zari,
Tq. & Dist. Parbhani.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner, Aurangabad,
Tq. & Dist. Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Parbhani,
Tq. & Dist. Parbhani.
4. The Education Officer (Primary),
Zilla Parishad, Parbhani,
Tq. & Dist. Parbhani.
5. The Block Education Officer,
Panchayat Samiti,
Tq. & Dist. Parbhani.

..Respondents

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Mr. S. K. Mathapati, Advocate for the Petitioner.
Mr. S. P. Joshi, AGP for Respondent Nos.1 and 2.
Mr. S. B. Ghute, Advocate for Respondent Nos.3 and 4.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 01st AUGUST, 2025.**

JUDGMENT:-

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

2. The petitioner impugns orders dated 11.01.2021, 13.10.2021 and 13.03.2023 passed by Divisional Commissioner, Aurangabad, thereby upholding order dated 06.12.2019 passed by Chief Executive Officer, Zilla Parishad, Parbhani, thereby imposing penalty of withholding one year increment of petitioner.

3. On 02.08.2004, petitioner was appointed as Shikshan Sevak. Since then, he is discharging his duties as trained graduate teacher. The petitioner has updated his educational qualification and acquired various post-graduate degrees including Doctorate. When petitioner was posted at Zilla Parishad High School, Zari, respondent no.1 implemented "Pragat Shaikshanik Maharashtra Program", whereunder Learning Level Test of students taking education in Zilla Parishad Schools has been arranged to check performance of students. The Learning Level Test of students at Zilla Parishad School, Zari was taken, wherein performance of school was found amongst three bottom level schools.

4. The petitioner was served with show cause notice on the basis of allegations that petitioner failed to perform his duties and proposing action under Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules 1964 (for short 'Rules of 1964'). The petitioner submitted his explanation and pointed out that result of 8th standard in his class is 72.83% in respect of subject English, which is better than previous performance of

students. He pointed out that girl students are transferred to his school on 01.07.2019. He could not get sufficient time to work on their performance. However, respondent no.3 passed impugned order. The petitioner preferred Appeal before Divisional Commissioner, who dismissed his Appeal. The petitioner then attempted Review of orders of learned Divisional Commissioner. However, same has been dismissed. Hence, this writ petition.

5. Mr. Mathpati, learned Advocate appearing for petitioner submits that petitioner has rendered best services as trained graduate teacher in Zilla Parishad School. The new students were admitted in his school in the month of June/July. The girl students were admitted to his school on 01.07.2019. Finding their performance at bottom level, impugned action is taken against petitioner. According to Mr. Mathpati, petitioner could not have victimized giving reasons of poor performance of students, who had hardly taken training under petitioner. He would submit that respondent-authorities have not considered explanation tendered by petitioner and passed unreasoned order imposing minor penalty. According to Mr. Mathpati, Appellate Authority failed to apply mind to the contentions of petitioner. As such, landed in error while confirming order imposing penalty.

6. Rule 7 of Rules of 1964 prescribes for procedure for imposing penalty. Rule 7 deals with minor punishment, which reads thus:

“७ किरकोळ शिक्षा लादण्याबाबतची कार्यपद्धती :-

१ अ) परिषद कर्मचा-यास त्याच्याविरुद्ध करण्यात यावयाची कारवाईबाबतचा प्रस्ताव आणि ज्या अभिकथनावरून अशी कारवाई करण्याचे योजिले असेल ती अभिकथने यांची लेखी सूचना दिल्याखेरीज व त्यास कोणतेही अभिवेदन करण्याची इच्छा असल्यास ते करण्याची त्यास संधी दिल्याखेरीज आणि

ब) असे कोणतेही अभिवेदन असल्यास, त्यावर शिस्तविषयक प्राधिकरणाने विचार केला असल्याखेरीज, नियम ४ चे खंड (एक) ते (तीन) व खंड (आठ) मध्ये विनिर्दिष्ट केल्यापैकी कोणतीही शिक्षा लादणारा आदेश देण्यात येणार नाही.

२) अशा प्रकरणामधील कामकाजाच्या अभिलेखात पूढील गोष्टींचा समावेश होतो
(एक) परिषद कर्मचा-यास, त्याच्याविरुद्ध करण्यात यावयाच्या कारवाईचा प्रस्तावाची दिलेली एक प्रत

(दोन) त्यास कळविलेल्या प्राधिकरणाच्या निवेदनाची प्रत

(तीन) त्याने कोणतेही अभिवेदन केले असल्यास, ते अभिवेदन आणि

(चार) त्या प्रकरणावरील आदेश व त्याबाबतची कारणे”

7. Plain reading of aforesaid provision depicts that although departmental enquiry is not required for imposing minor punishment, it is necessary to issue show cause notice or call explanation from delinquent employee and after considering his explanation pass further orders.

8. In present case, petitioner is punished for bad performance of students in his school. The petitioner was served with show cause notice dated 11.09.2019 alleging that result of 8th standard in subject of English is not upto the mark. Further passage reading result is only 40%. As such, petitioner was imputed for breach of Rule 3 of Rules of 1964. The petitioner duly replied aforesaid show cause notice and pointed out that passing percentage of students in his class i.e. 8th (B) is 72.83%, which is higher than average result

of school, which is 65.75%. The petitioner has further explained that all girl students were transferred from Zilla Parishad School, Zari on 01.07.2019 and passage reading test was conducted on 08.07.2019. He explained that when those students were migrated to his school, 20% girls students were unable to read alphabets and words. Further parents are not serious about their education. The students are often absent and seldom attend school.

9. Perusal of impugned order dated 06.12.2019 shows that it merely records that reply submitted by petitioner is unjustified. There is no reference to reasons given by petitioner. Apparently, impugned order sans application of mind and records no reason for rejecting defence put forth under reply. Clause 7 of Rules of 1964 mandates that reply filed to show cause notice has to be considered before passing order imposing minor penalty. In present case, from reading of impugned order it is evident that no consideration is given to reasons mentioned in reply to show cause notice. The impugned order is mechanically passed.

10. Perusal of order of Divisional Commissioner also depicts non-application of mind. The Appellate Authority also did not refer to the contents of reply to show cause notice and simply asserted that Disciplinary Authority has power to take action under Rules. The aforesaid observations takes this Court to the conclusion that impugned order is not sustainable in law.

11. In result, Writ Petition is allowed in terms of prayer Clauses (A), (B) and (C).

12. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2025