



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 8252 OF 2022**

Smt. Dr. Vaishali Devidas Mohokar,  
Age 46 years, Occupation – Service,  
R/o 35, Khankhoje Nagar-2, Manewada,  
Cement Road, Nagpur-440024.

.... **PETITIONER**

**VERSUS**

1) Nagpur Municipal Corporation,  
Nagpur, through the Commissioner,  
Civil Lines, Nagpur – 440001.

2) Additional Commissioner,  
Nagpur Municipal Corporation,  
Civil Lines, Nagpur – 440001.

3) Medical Health Officer,  
Nagpur Municipal Corporation,  
Civil Lines, Nagpur – 440001.

.... **RESPONDENTS**

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Mr. S.A. Kalbande, Counsel for the petitioner,  
Mr. A.S. Mehadia, Counsel for the respondents.

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**CORAM : AVINASH G. GHAROTE &  
ABHAY J. MANTRI, JJ.**

**DATE : 09-05-2025**

**JUDGMENT : (Per : ABHAY J. MANTRI, J.)**

Heard. **RULE.** Heard finally with the consent of the learned  
Counsel for the parties.

2. The petition questions the order dated 29-03-2022 passed by  
respondent No.2 thereby imposing punishment on the petitioner under

Section 56(2)(b) of the Maharashtra Municipal Corporations Act, 1949 (for short, "*Act of 1949*") and temporarily stayed the yearly increment for a period of two years and the order passed by the Deputy Commissioner, Nagpur Municipal Corporation, Nagpur on 23-06-2022 in appeal whereby holding that considering the nature of the punishment, the provisions of Section 56(1)(d) as well as Section 56(4) of the Act of 1949 do not apply.

3. The petitioner is a qualified Doctor. She was appointed as a Gynaecologist in the Health Department of Nagpur Municipal Corporation, Nagpur on 30-05-2007. During Covid-19, on 06-04-2021 and 24-04-2021, her father and brother-in-law passed away due to Covid-19. Therefore, she was forced to take leave. Respondent No.3 had not granted medical leave and deducted her salary from 17-04-2021 to 29-04-2021. Thereafter, she informed the higher officials about the said fact and requested to sanction the leave. However, without granting her leave, the respondent communicated that she was absent from her duties. She had replied to the said communication.

4. On 07-05-2021, the petitioner was transferred to Laxmi Nagar Zone, Nagpur, from Panchpaoli Maternity Home, Nagpur. The department created ten vaccination centres in the Laxmi Nagar Zone. In a communication dated 15-05-2021, she was informed to complete the target of 600 COVID-19 R.T.P.C.R. tests. She did not comply with the same

or explain it to the respondents. Therefore, she was suspended with effect from 17-05-2021.

5. On 17-06-2021, 29-06-2021, 17-08-2021, 27-08-2021, 06-09-2021, 17-09-2021, and 23-09-2021, the petitioner gave various representations to the respondents, sought copies of the necessary documents, and requested to grant her suspension allowance.

6. On 27-09-2021, respondent No.2 served a copy of the charge-sheet under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short, "**Rules of 1979**") to the petitioner as she had not completed the target of 600 Covid-19 R.T.P.C.R. tests in Laxmi Nagar Zone. She was absent from duty from 17-05-2021 without any intimation. During the enquiry, the department examined the witnesses. She cross-examined two witnesses. After completion of the enquiry, the enquiry Officer submitted their report to the competent authority, as some of the charges were proved against her. On 14-02-2022, respondent No.2 issued a show cause notice to the petitioner and informed her that they propose to stop two annual increments permanently under Section 56(2)(b) of the Act of 1949. She replied to the said show cause notice on 23-02-2022. After considering the report and reply, respondent No.2 on 29-03-2022 passed the impugned order and imposed the punishment as stated above. Aggrieved by the said order and consequential order passed in the appeal on 23-06-2022, she has preferred this petition.

7. Mr. S.A. Kalbande, learned Counsel for the petitioner, vehemently contended that as per Section 56 of the Act of 1949, the Corporation is the competent authority and, therefore, the passing of the order by respondent No.2 without having authorisation by the Commissioner is contrary to the law. He further canvassed that as per the provisions of Section 56(1)(b) and 56(2)(f) of the Act of 1949, the order of suspension by the Commissioner requires ratification by the Corporation within a period of six months, failing which the order of suspension is automatically revoked and the petitioner is entitled for the payment of the said period. Therefore, the passing of the order by respondent No.2 is illegal and liable to be quashed. It is further propounded that as per Rule 68 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (for short, "**Rules of 1981**"), the petitioner is entitled to get subsistence allowance during the pendency of the enquiry. However, the respondents have not been paid the said subsistence allowance. Therefore, she is also claiming the same. Lastly, he argued that the order of punishment and suspension came to be passed under Section 56(2)(b) of the Act of 1949 without the proper authorisation of the appointing authority, i.e., the Corporation. Hence, the said orders are liable to be quashed and set aside. Therefore, he urges the petition to be allowed.

8. To substantiate his contentions, he has relied upon the judgment in *Jagdamba Prasad Shukla v. State of U.P. and others*, AIR 2000 SC 2806 and submitted that the petitioner is entitled for subsistence allowance as well as passing of the order by respondent No.2-Authority is contrary to provisions of Section 56 of the Act of 1949.

9. Mr. A.S. Mehadia, learned Counsel for respondent Nos. 1 to 3, strongly opposed the petition on the ground that by virtue of the Resolution dated 28-06-1984, the Corporation had delegated its powers in favour of the Commissioner and other officials of the Corporation. Similarly, vide revised delegation of power dated 26-02-2020, the Commissioner had delegated his powers to conduct the departmental enquiry by the Additional Commissioner. He further canvassed that during the enquiry, the petitioner had cross-examined two witnesses. Therefore, it cannot be said that the competent authority was not empowered to conduct the enquiry and pass the order. He drew our attention to Section 56 of the Act of 1949, Rule 8(2) of the Rule of 1979 and submitted that after following due process of law, the respondent has conducted the enquiry and passed the impugned order.

He further argued that, in *Dnyaneshwar Sopanrao Bhandare v. State of Maharashtra and others*, 2009 SCC Online Bom. 1705, this Court, after considering various provisions of the Act of 1949 and Rules of 1979 and the Resolution dated 28-06-1984, has held that by virtue of the delegation

of power, the Additional Commissioner is competent as the disciplinary authority and can impose minor punishment. Hence, the imposition of the minor penalty by the Additional Commissioner cannot be said to be vitiated. Also, he has relied on the judgment in *Union Bank of India v. Uday Bhan Singh*, (2011) 11 SCC 393, and canvassed that the plea that non-furnishing of the documents would not vitiate the enquiry proceedings. Hence, he urges the dismissal of the petition.

10. We have considered the rival contentions of the parties and gone through the impugned orders as well as the record. We have also gone through the judgments relied upon by the respective parties and the relevant provisions of the Act and Rules.

11. The short question that arises before us -

*‘Whether the Additional Commissioner was empowered to conduct the enquiry and impose a minor penalty?’*

12. While dealing with the controversy, we would like to consider the provisions of Sections 56 and 69 of the Act of 1949, Rule 8 of the Rules of 1979, and the Corporation's Resolution dated 28-06-1984 and revised order of delegation of powers U/s 69 (1) of the Act.

13. First, we would like to reproduce Section 69 of the Act of 1949, as under:

***“69. Municipal officers may be empowered to exercise certain of the powers, etc. of the Commissioner or the Transport Manager. -***

***(1) Subject to the provisions of sub-sections (2) and (3), any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner or the Transport Manager by or under any of the provisions of this Act may be exercised, performed or discharged, under the control of the Commissioner or the Transport Manager; as the case may be, and subject to his revision and to such conditions and limitations, if any, as may be prescribed by rules, or as he shall think fit to prescribe in a manner not inconsistent with the provisions of this Act or Rules, by any municipal officer whom the Commissioner or the Transport Manager generally or specially empowers by order in writing in this behalf; and to the extent to which any municipal officer is so empowered the word "Commissioner" and the words "Transport Manager" occurring in any provision in this Act, shall be deemed to include such officer.***

***(2) -----***

***(3) -----”***

14. ***As per Section 45 of the Act of 1949, the Corporation is empowered to appoint a Medical Officer of Health.*** Therefore, the Corporation is the competent authority while dealing with the imposition of penalties on Municipal Officers/Medical Officers as per Section 56 of the Act of 1949.

15. It further reveals that ***by Resolution dated 28-06-1984*** the Corporation adopted the Rules of 1979; so also, after taking into consideration the provisions of Section 53(2) of the Act of 1949, the penalties laid down in Rule 5 of the Rules of 1979, are classified as major and minor penalties as under :

***“Major Penalties No. (iii) (vi) (vii)***

***Minor Penalties No. (i) (ii) (iv) (v) (viii)”***

16. By the said Resolution, the Corporation delegates its power to the Municipal Commissioner to act as a competent authority u/s 56 of the Act of 1949 for imposing minor penalties on Class-I employees of the Corporation. Thus, it is apparent that by the said Resolution, the Corporation has delegated its power to the Municipal Commissioner for imposing minor penalties on Class-I employees.

17. As per Section 69 (1) of the Act of 1949, the Commissioner is empowered by written order to delegate its powers, duties or functions *conferred or imposed or vested upon it* in favour of any Municipal Officer. We would like to reproduce the relevant clauses of the revised order of delegation of powers dated 26-02-2020 as under :

“कार्यालय, नागपूर महानगरपालिका, नागपूर  
सामान्य प्रशासन विभाग  
महानगरपालिका मार्ग, सिव्हील लाईन्स, नागपूर - ४४०००१

क्रमांक - साप्रवि/१६/डीईएल.

दिनांक - २६.२.२०२०

सुधारित प्रत्यायोजन आदेश

वाचा - साप्रवि/१७/डीईएल दिनांक १६.०२.२०२०

महाराष्ट्र महानगरपालिका अधिनियम १९४९ चे कलम ६९ (१) अन्वये, मी तुकाराम मुंदे, आयुक्त महानगरपालिका नागपूर मला असलेल्या अधिकारांचा वापर करून खालीलप्रमाणे कामकाजाचे प्रत्यायोजन अधिकार नमूद केलेल्या अटी व शर्ती याला अधिन राहून कामे सुरळीत पार पाडण्याकरिता व कर्तव्य बजावण्याकरिता अति. आयुक्त (शहर) यांना यापूर्वी या संबधाने प्रत्यायोजित करण्यात आलेले अधिकार मध्ये अंशतः बदल करून खालील नमुद विभागाचे कर्तव्य बजावण्याकरिता खालीलप्रमाणे अधिकार प्रत्यायोजित करण्यात येत आहे.

| अ. क्र. | कामाचे स्वरूप | प्रत्यायोजित विभाग | अधिका-यांचे पदनाम |
|---------|---------------|--------------------|-------------------|
| १.      | ...           | ...                | ...               |

|    |                                                                                                                                                                                                                                        |                     |                  |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|------------------|
| २. | ...                                                                                                                                                                                                                                    | ...                 | ...              |
| ३. | ...                                                                                                                                                                                                                                    | ...                 | ...              |
| ४. | मनपाच्या वर्ग १ ते ४ पर्यंत सर्व अधिकारी/कर्मचा-यांच्या (कार्यकारी अभियंता व त्यांच्यापेक्षा वरिष्ठ अधिकारी तसेच विभाग प्रमुखांची प्रकरणे वगळून) विभागीय चौकशी प्रकरणांत आयुक्तांना शिस्तभंग विषयक प्राधिकरण म्हणून असलेले सर्व अधिकार | विभागीय चौकशी विभाग | अति.आयुक्त (शहर) |

टिप - .....

सही  
(तुकाराम मुंडे)  
आयुक्त,  
महानगरपालिका, नागपूर  
दिनांक :- २६/०२/२०२०

18. On conjoint reading of Sections 56, 69 of the Act of 1949 and Resolution dated 28-06-1984 and revised order of delegation of powers dated 26-02-2020, it is evident that the Corporation has delegated its power to the Commissioner and Commissioner by revised order dated 26-02-2020, has delegated its power to the Additional Commissioner to conduct the departmental enquiry of Class I to IV officers.

19. It is worth noting that the petitioner has not challenged the Resolution dated 28-06-1984 and revised order of delegation of powers dated 26-02-2020; therefore, they stand as it is. Thus, based on the said Resolution and revised order of delegation of powers, the Additional Commissioner is empowered to conduct the departmental enquiry and impose a minor penalty.

20. It is undisputed that the penalty imposed on the petitioner is minor. Therefore, by virtue of the delegation of the powers by the Corporation and the Commissioner, the Additional Commissioner has conducted the enquiry and imposed a minor punishment on the petitioner. Therefore, we do not see any illegality or perversity in the said punishment order.

21. Similarly, *Rule 5 of the Rules of 1979* classified minor and major penalties. *Withholding of increments of pay* falls under the minor penalties. Because of the delegation of powers in favour of the Additional Commissioner, he was competent to conduct the inquiry and impose minor penalties under Rule 5(1)(iv) read with Section 56(2)(b) of the Act of 1949. Hence, the initiation or institution of departmental enquiry by the Additional Commissioner cannot be said to be illegal or without jurisdiction.

22. *Under Section 56(2) of the Act of 1949*, the penalties which may be imposed under this Section are prescribed as under :

***“56. Imposition of penalties on municipal officers and servants.***

***(1) .....***

***Provided that – (a).....***

***[(b) any officer or servant, whether appointed by the Corporation or any other competent, authority, except Transport Manager being a Government Officer on deputation, may be suspended by the Commissioner pending an order of the Corporation and when the officer so suspended is the Transport Manager or an officer appointed under section 45, such suspension with reasons therefor, shall, forthwith be***

*reported by the, Commissioner to the Corporation, and such suspension shall come to an end if not confirmed by the Corporation within a period of six months from the date of such suspension:*

*Provided that, such suspension of an officer or servant pending inquiry into the allegation against such officer or servant shall not be deemed to be a penalty.]*

*(c) The Commissioner may impose any of the penalties as specified in clause (a), ~~(b)~~, (\*), (d), (e) and (f) of sub-section (2) on any officer appointed by the Corporation [other than Transport Manager if he is a Government Officer on deputation];*

*[Explanation. - -----*

*(2) The penalties which may be imposed under this section are the following, namely:-*

*(a) -----*

*(b) Withholding of increments or promotion, including stoppage at an efficiency bar;*

*(c) to (e) -----*

*(f) Suspension;*

*(g) & (h) -----*

*(3) to (6) -----”*

23. Similarly, under **Rule 5 of the Rules of 1979**, the minor and major penalties are prescribed as under :

**“5. Penalties –** (1) Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

**Minor Penalties -**

*(i) -----*

*(ii) -----*

*(iii) -----*

*(iv) withholding of increments of pay.*

**Major Penalties -**

*(v) to (ix) -----”*

24. As per Resolution dated 28-06-1984, after taking into consideration provisions of Section 53(2) of the Nagpur Municipal Corporation Act {(i.e. Section 56) of the Act of 1949 }, the penalties laid down in Rule 5 of the Rules of 1979 are classified as under :

**“RESOLUTION**

*No.20*

*Dated 28 June, 1984*

*In pursuance of Government of Maharashtra Urban Development Public Health & Housing Department, Resolution No. NMC-8366-32502-C, Dt. 30-09-1966, the Bombay Civil Service Rules have been made applicable to the Nagpur Mpl. Corporation Staff. As the Bombay Civil Service Rules are now replaced by Maharashtra Civil Service Rules, and the Disciplinary & Appeal Rules are framed under Maharashtra Civil Services Rules; **the Maharashtra Civil Service (Disciplinary & Appeal) Rules, 1979 are automatically applicable to the Nagpur Mpl. Corporation employees. However, by way of abundant caution, these rules are formally adopted.***

*Taking into consideration the provisions of **Section 53(2) of the Nagpur Mpl. Corporation Act, the penalties laid down in Rule 5 of the Maharashtra Civil Service Rules are classified as under :-***

*Major Penalties No. (iii) (vi) (vii)*

*Minor Penalties No. (i) (ii) **(iv)** (v) (viii)*

*In Rule No. 6 of Maharashtra Civil Service Rules the word "Governor" should be read as "Corporation". Proviso to Rule No.6 of Maharashtra Civil Service Rules will be as follows:-*

***Municipal Commissioner will be the competent authority for imposing minor penalties on class I employees of the Corporation. The Corporation will be the authority for imposing major penalties on such officers.***

Clause (iv) of Rule 5(1) and the Resolution dated 28.06.1984 indicates minor penalties. Thus, it is evident that the penalty imposed

regarding withholding the petitioner's increments falls under the purview of minor penalties. By virtue of the Resolution as well as the revised order of delegation of power dated 26-02-2020, the Additional Commissioner is empowered to hold an enquiry and impose minor punishment. Therefore, it cannot be said that the said punishment is unauthorised or illegal.

25. In the *State of Maharashtra and others v. Wasudeo Madhukarrao Pande*, 2021(5) *Mh.L.J.* 364, the facts were that “no opportunity of hearing was given to the petitioners therein and, therefore, this court held that “a fair hearing is an important ingredient of the rule of ‘*audi alteram partem*’. The rule of ‘*fair hearing*’, which embraces almost every facet of fair procedure, requires that the party proceeded against and who could be affected by reason of any final order passed in the proceedings, is given the opportunity to meet the case against him effectively.” In the case at hand, the petitioner participated in the enquiry and also cross-examined two witnesses. Therefore, it cannot be said that no opportunity of hearing was granted to the petitioner while conducting the enquiry. Thus, the dictum laid down in the said judgment is hardly of any use to the petitioner in support of her case that no opportunity of hearing was granted to her. On the contrary, it seems that the petitioner herself on 17-06-2021, 29-06-2021, 17-08-2021, 27-08-2021, 06-09-2021, 17-09-2021 and 23-09-2021 appeared in the enquiry and filed representations before the competent authority and cross-examined two witnesses.

26. Apart from this, the learned Counsel for the petitioner raised the ground that no subsistence allowance was paid to the petitioner during enquiry and, therefore, he contended that after the period of six months, the petitioner is entitled to the salary as the Commissioner failed to get ratification by the Corporation within a period of six months and, therefore, the order of subsistence allowance is automatically revoked. The petitioner is entitled to the pay for said period.

27. As against this, the respondents canvassed that the petitioner was suspended on 17-05-2021 and reinstated on 18-11-2021 immediately after the completion of six months. Therefore, the question of obtaining ratification from the Corporation does not arise. During the pendency of the enquiry, subsistence allowance was paid to the petitioner as per the rules.

28. The petitioner does not dispute the contention of the respondents that she was suspended on 17-05-2011 and reinstated on 18-11-2021, which itself shows that after completion of six months, immediately the petitioner was reinstated and, therefore, in our view, the question of obtaining the ratification from the Corporation as per Section 56 of the Act of 1949 does not arise at all.

29. In **Jagdamba Prasad Shukla**, the Hon'ble Supreme Court held that

*“The employee, who is under suspension, is entitled to the subsistence allowance in accordance with the rules.”*

The petitioner is only claiming that the Commissioner failed to obtain the ratification from the Corporation within a period of six months, and, therefore, the petitioner is entitled to payment of the salary for the said period. However, it does not appear that she was suspended beyond the period of six months, and, therefore, we do not find substance in his contention that due to the suspension of the petitioner beyond the period of six months, she is entitled to the entire payment of salary for the said period. Furthermore, the enquiry officer while passing the order has categorically held that the petitioner is found guilty and, therefore, he imposed minor penalty under Section 56(2)(b) of the Act of 1949 and temporarily stopped her yearly increments for a period of two years and also declared that the period of suspension i.e. 17-05-2021 till she joined service be termed as a suspension. Therefore, we also do not find substance in the contention of the learned Counsel for the petitioner, and the observations made in **Jagdamba Prasad Shukla** are hardly of any assistance in support of her claim.

30. A Perusal of the impugned order dated 29-03-2022 would indicate that the petitioner does not dispute that she had not completed 600 R.T.P.C.R tests daily while on duty in the Laxmi Nagar Zone. Also, the

petitioner does not dispute that from 17-05-2021, neither she was on duty nor filed any application for the grant of leave before proceeding on leave and, therefore, the enquiry officer has categorically held that “***the charges levelled against the petitioner are proved and held her guilty and imposed the punishment as stated above.***”

31. The petitioner challenged the said order before the appellate authority. However, the appellate authority dismissed her appeal, holding that “***considering the nature of the punishment imposed on the petitioner, the provisions of Section 56(1)(d) and 56(4) of the Act of 1949 do not apply***”, and, therefore, dismissed the appeal. As per Section 56(4), any person aggrieved by the imposition of a major penalty can prefer an appeal before the appellate authority. However, in the case in hand, the penalty imposed on the petitioner is minor in nature and, therefore, we do not find any illegality in passing the order by the appellate authority that the provisions of Section 56(1)(d) and 56(4) do not apply to the case at hand.

32. Thus, considering the above discussion, it appears that the petitioner failed to show that the Additional Commissioner was not empowered to hold an enquiry and impose minor punishment. On the contrary, by virtue of the Resolution, provisions of Section 69 of the Act of 1949 and revised order of the delegation of power dated 26-02-2020, the

Additional Commissioner is the competent authority to impose the minor penalty. Consequently, the petitioner failed to demonstrate that the Additional Commissioner was not empowered to impose the minor penalty. Hence, we answer the question in the affirmative. Similarly, the petitioner failed to show that she was suspended beyond the period of six months and, therefore, she is entitled to subsistence allowance or salary for the said period.

33. In the wake of the above, the petition lacks merit and is dismissed accordingly.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

*adgokar*