



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

WRIT PETITION NO. 6754 OF 2023

(Zilla Parishad Akola, through its Chief Executive Officer & Ors. Vs. Krishnarao Marotrao Taide)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R.M. Sharma, Counsel for the petitioners.
Mr. S.M. Vaishnav, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
FEBRUARY 18, 2025

The petitioners are aggrieved by judgment and order dated 23/12/2022 passed by the Member, Industrial Court, Akola, in Complaint ULP No. 36/2014. The respondent had filed the said complaint, which proceeded *ex parte*. The respondent had challenged the order of punishment imposed on him by petitioner no.1, wherein one annual increment was permanently withheld and an amount of Rs.12,896/- was directed to be recovered from him. The aforesaid punishment was imposed on the basis of enquiry conducted by petitioner nos. 2 and 3.

2] The petitioners did not contest the complaint and, therefore, it proceeded *ex parte*. Accordingly, the Industrial Court, after recording facts of the case and considering the documents placed on record, allowed the complaint merely because it proceeded *ex parte*. The order of punishment dated 4/5/2005 was accordingly quashed and set aside.

3] The learned Counsel for the petitioners has rightly argued that despite the complaint being heard *ex parte*, the Industrial Court was duty bound to go through the enquiry report and other documents and render a categorical finding as to why the order of punishment is liable to be quashed and set aside. Merely because the complaint proceed *ex parte* will not be a reason to set aside the order of punishment.

4] The learned Counsel for the respondent submits that though the order impugned does not disclose the reasons, the operative part of the order will be justified on the basis of apparent errors committed by the petitioners. He has invited my attention to the order impugned, which refers to the enquiry report dated 19/5/2001. The enquiry was conducted by the Block Development Officer, who found that an amount of Rs.3,41,652/- is recoverable from the respondent. Accordingly, punishment of compulsory retirement was recommended. Thereafter followed some correspondence and the petitioners thought it necessary to carry out measurement of the work done during the tenure of the respondent to ascertain the amount recoverable from him. The measurements were verified with the assistance of the Sectional Engineer, Panchayat Samiti, Telhara, which indicates that an amount of Rs.12,896/- only was recoverable from the respondent. This report was not served on the respondent nor was he heard before imposing penalty, though minor.

5] When enquired, the learned Counsel for the petitioners admit that the said report was not served on the respondent nor was he heard on the said report. According to him, since the amount, though reduced, was recoverable from the respondent and similar report filed earlier was served on the respondent, even if the report of measurement is not served, it will not cause any prejudice to him.

6] To my mind, if penalty is to be imposed based on any correspondence or report of measurement, persons, like the respondent, will be entitled to make his submissions on the said report/communication/correspondence inasmuch as it is well settled that no one can be condemned without giving opportunity of hearing. In fact, Rule 7 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964, provides for a procedure for imposing minor penalty. The petitioners are duty bound to inform the servant of parishad about the proposal to take action against him and also of the allegations on which the said action is proposed. The rule further provides that the parishad servant may make representation, if he so desires and such representation, if made, shall be considered by the disciplinary authority. The said procedure having been not followed, the impugned order imposing penalty on the respondent will have to be quashed and set aside and since the error is so apparent, instead of remanding the matter back to the Tribunal, the issue involved can be resolved here because the inference is inevitable.

7] In the circumstances, the order passed by the Industrial Court will have to be upheld but for different reasons, as noted above.

8] The petition, therefore, is liable to be dismissed. Hence, following order :

ORDER

The petition is dismissed.

9] At this stage, the learned Counsel for the petitioners seeks liberty to issue show cause notice to the respondent on the basis of measurement report dated 29/10/2004.

10] Permission is granted, if there is not legal impediment.

11] The petition is disposed of in above terms.
No costs.

(ANIL L. PANSARE, J.)

Sumit