Vivekanand

VIVEKANAND RAJENDRA BONDE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12434 OF 2019

Sunil Uttamrao Pawar … Petitioner

V/s.

The Chief Executive Officer,
Zilla Parishad, Nashik And Ors … Respondents

Mr. Vivek Salunke, for the Petitioner.

Ms. Chaitali Deshmukh a/w Mr. Vikas More, for the Respondent No. 1.

Smt. S. R. Crasto, Additional G. P., for the State-Respondent Nos. 2 & 3.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 12, 2026

P.C.:

1. The Petitioner has invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, challenging the order dated 14 November 2018 passed by Respondent No. 3, whereby the Revision Application filed by the Petitioner under Rule 21 of the Maharashtra Zilla Parishad (Discipline and Appeal) Rules, 1964, came to be rejected. Consequently, the order dated 1 January 2018 passed by Respondent No. 2 in Appeal No. 73 of 2016, confirming the order dated 19 September 2015 passed by Respondent No. 1, came to be upheld. By the said order dated 19 September 2015, the Petitioner was subjected to the punishment of reduction or reversion to the basic salary.

2. The facts and circumstances giving rise to the present Petition are as follows. On 14 October 1993, the Petitioner joined the service of Respondent No. 1 as a Gram Sevak. On 24 September 2013, while the Petitioner was serving as a Gram Sevak at Gram Panchayat, Dewala, a charge-sheet came to be issued to him. Thereafter, on 26 February 2015, the Enquiry Officer submitted the enquiry report in respect of the charges levelled against the Petitioner. On 18 April 2015, Respondent No. 1 issued a show-cause notice to the Petitioner, calling upon him to explain why punishment should not be imposed upon him. The Petitioner submitted his reply and explanation on 22 July 2015, along with the supporting documents. On 19 September 2015, Respondent No. 1 passed an order directing reduction or reversion of the Petitioner to the basic salary, without duly considering the Petitioner's case and the documents available on record. The Petitioner challenged the said order by filing Appeal No. 73 of 2016. However, Respondent No. 2 rejected the appeal by an order dated 1 January 2018. The Petitioner thereafter filed Revision Application No. 173 of 2018 before Respondent No. 3. The said Revision Application was also rejected by an order dated 14 November 2018. Being aggrieved by the orders passed by the disciplinary, appellate and revisional authorities, the Petitioner filed the present Writ Petition in March 2019.

3. Mr. Salunke, learned Advocate appearing for the Petitioner, invited my attention to the provisions of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. He submitted that Sub-rule (9) of Rule 6 requires the Disciplinary

Authority, where it is not the Inquiring Authority, to consider the record of the inquiry and record its findings on each charge. He further submitted that Sub-rule (10) prescribes the procedure to be followed by the Disciplinary Authority before imposing the penalties specified therein. According to him, the Disciplinary Authority failed to comply with Sub-rules (9), (10) and (11) of Rule 6. He, therefore, contended that the order imposing punishment upon the Petitioner stands vitiated for non-compliance with the mandatory procedure prescribed under the Rules.

4. Per contra, Ms. Deshmukh, learned Advocate appearing for Respondent No. 1, submitted that the Petitioner had not raised this objection before either the Appellate Authority or the Revisional Authority. She further submitted that no prejudice has been caused to the Petitioner on account of the alleged procedural irregularity. She also pointed out that the inquiry pertains to the year 2014 and contended that interference at this stage would unnecessarily prolong the disciplinary proceedings and defeat the purpose for which they were initiated. On these grounds, she submitted that no interference with the impugned orders is warranted.

5. Rule 6, Sub-rules (9), (10) and (11) of the said Rules read as follows:

> **6. Procedure for imposing major penalties.**
>
> ……..
>
> *(9) The Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry) and record its findings of each charge.*

(10) (i) If the Disciplinary Authority, having regard to its

findings on the charges, is of the opinion that any of the penalties specified in clauses (iv) to (vii) of Rule 4 should be imposed, it shall-

> *(a) furnish to the Parishad servant a copy of the report of the Inquiring Authority, and where the Disciplinary Authority is not the Inquiring, Authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority, and*
>
> *(b) give him a notice stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representation as he may wish to make on the proposed penalty, provided that such representation shall be based only on the evidence adduced during the enquiry.*

(ii) The Disciplinary Authority shall consider the representation, if any, made by the Parishad servant in response to the notice under clause (i) and determine what penalty, if any, should be imposed on the Parishad servant and pass appropriate orders on the case.

(11) If the Disciplinary Authority, having regard to its findings is of the opinion that any of the penalties specified in clauses (i) to (iii) and clause (vii) of Rule 4 should be imposed, it shall pass appropriate orders in the case.

6. On a plain reading of Sub-rules (9), (10) and (11) of Rule 6, it is clear that the Rules prescribe the procedure to be followed by the Disciplinary Authority while considering the findings of the inquiry and deciding whether punishment should be imposed upon a Parishad servant. Sub-rule (9) specifically requires the Disciplinary Authority, where it is not the Inquiring Authority, to consider the record of the inquiry and record its findings on each charge. Thus, the Disciplinary Authority cannot mechanically act

upon the enquiry report without independently considering the material on record and recording its findings as required by the Rules. Sub-rule (10) further provides the procedure to be followed where the Disciplinary Authority proposes to impose any of the penalties specified in clauses (iv) to (vii) of Rule 4. The procedure includes furnishing the enquiry report and, where applicable, the findings of the Disciplinary Authority along with brief reasons for disagreement with the findings of the Inquiring Authority. It also requires the Disciplinary Authority to issue notice of the proposed penalty and consider the representation made by the concerned employee before determining the punishment, if any, to be imposed. Sub-rule (11), in turn, provides for passing appropriate orders where the Disciplinary Authority proposes to impose the penalties specified in the clauses mentioned therein. The applicability of these provisions depends upon the nature of the penalty proposed and the findings recorded by the Disciplinary Authority. The procedure applicable to the particular penalty must, therefore, be followed.

7. In my opinion, compliance with Sub-rule (9) of Rule 6 is mandatory where the Disciplinary Authority is not the Inquiring Authority. The requirement to consider the enquiry record and record findings on each charge is an essential step in the decision-making process. It enables the Disciplinary Authority to independently assess the material and arrive at its own conclusion before deciding whether punishment is warranted. If the Disciplinary Authority fails to undertake this exercise, the decision to impose punishment cannot be sustained merely on the ground

that an enquiry report was prepared or that an opportunity to submit an explanation was given to the employee.

8. Once Sub-rule (9) becomes applicable, the Disciplinary Authority is also required to follow the further procedure prescribed under Sub-rules (10) and (11), to the extent applicable to the penalty under consideration. These requirements cannot be treated as empty formalities. They regulate the manner in which disciplinary power is exercised and ensure that the decision is taken after consideration of the relevant material and in accordance with the Rules.

9. In the present case, the Petitioner's contention is that the Disciplinary Authority did not comply with these requirements before imposing the punishment of reduction or reversion to the basic salary. The record and the impugned order must be examined in the light of the procedure prescribed under the Rules. Where the record establishes that the required findings and the applicable procedural steps have not been undertaken, the order cannot be sustained merely by invoking the doctrine of substantial compliance. Substantial compliance cannot be used to dispense with an essential statutory requirement which governs the exercise of disciplinary power. In such circumstances, it is unnecessary to determine the question solely on the basis of whether the Petitioner has separately demonstrated prejudice, since the failure concerns compliance with the prescribed decision-making procedure itself.

10. As regards the objection raised on behalf of Respondent No. 1 that the Petitioner did not raise this ground before the Appellate Authority or the Revisional Authority, I am unable to accept that objection as a sufficient reason to decline consideration of the issue. The question whether the Disciplinary Authority followed the mandatory procedure prescribed under Rule 6 can be examined with reference to the record already available before the authorities. It does not necessarily require the production of any new evidence. The relevant question is whether the Disciplinary Authority was also the Inquiring Authority and, if it was not, whether it complied with the requirements of Sub-rules (9), (10) and (11), as applicable.

11. If the existing record is sufficient to determine this question, the mere failure to raise the specific legal objection before the Appellate or Revisional Authority does not prevent this Court from examining it in the exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India. The objection raised by Respondent No. 1 regarding the stage at which the ground was taken, therefore, does not justify refusing to examine whether the impugned punishment was imposed in accordance with the Rules.

12. In view of the aforesaid discussion, I am of the opinion that the impugned punishment cannot be sustained if the Disciplinary Authority failed to comply with the mandatory requirements of Sub-rules (9), (10) and (11) of Rule 6, to the extent applicable. The Disciplinary Authority was required to follow the prescribed procedure before arriving at its decision regarding punishment. The orders passed by the Appellate and Revisional Authorities,

which upheld the punishment, also cannot remain undisturbed if the original order suffers from such non-compliance. At the same time, the appropriate course is not to terminate the disciplinary proceedings altogether. The alleged charges have not been finally determined by this Court on their merits. The defect identified concerns the procedure to be followed by the Disciplinary Authority while considering the enquiry report and deciding upon the appropriate action. The matter must, therefore, be remitted to the Disciplinary Authority for completion of the required procedure in accordance with the Rules. Having regard to the fact that the inquiry pertains to the year 2014, the further proceedings must be completed within a fixed period so that the matter does not remain pending indefinitely.

13. Hence, the following order is passed:

(i) The impugned orders dated 19 September 2015 passed by Respondent No. 1, 1 January 2018 passed by Respondent No. 2 in Appeal No. 73 of 2016, and 14 November 2018 passed by Respondent No. 3 in Revision Application No. 173 of 2018 are quashed and set aside.

(ii) The matter is remitted to the Disciplinary Authority for consideration afresh from the stage of compliance with Sub-rule (9) of Rule 6 of the Maharashtra Zilla Parishad (Discipline and Appeal) Rules, 1964.

(iii) The Disciplinary Authority shall consider the record of the inquiry, record its findings on each charge and thereafter follow the procedure prescribed under Sub-rules (10) and

(11) of Rule 6, as applicable, before passing an appropriate order in accordance with law.

(iv) Having regard to the fact that the inquiry pertains to the year 2014, the Disciplinary Authority shall complete the aforesaid procedure within four months from the date on which the parties appear before it.

(v) The parties shall appear before the Disciplinary Authority on 26 October 2026 at 11:00 a.m.

(vi) The Petition is disposed of in the above terms. There shall be no order as to costs.

14. The Writ Petition stands disposed of.

(AMIT BORKAR, J.)