

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 142 of 2022 (S.B.)

Prabhakar S/o Motiram Dahiwale,
aged about 58 years, Occu : Retired,
R/o MIG-30, MHADA Colony,
Khat Road, Bhandara, Dist. Bhandara.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
- 2) The Commissioner,
Tribal Development Department, M.S.,
Old Agra Road, Gadkari Chowk,
Nashik-2.
- 3) The Additional Commissioner,
Tribal Development, Giripeth,
Nagpur-10.

Respondents.

Shri R.M. Fating, Advocate for the applicant.
Shri H.K. Pande, learned P.O. for respondents.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Date of Reserving for Judgment : 13th March,2023.

Date of Pronouncement of Judgment : 28th March,2023.

JUDGMENT

(Delivered on this 28th day of March,2023)

Heard Shri R.M. Fating, learned counsel for the applicant
and Shri H.K. Pande, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed on the post of Secondary Teacher in the Ashram School. The applicant was promoted on 11/01/2017 on the post of Head Master and posted at Government Ashram School, Rangji, District Gadchiroli. On 25/01/2018 while he was working as a Head Master at Rangji, the Project Officer, Integrated Tribal Development Project (I.T.D.P.), Gadchiroli issued show cause notice to him, thereby calling the explanation in regard to irregularities found in Food Grains and other materials supplied in Hostel attached to the said Ashram School. On 31/01/2018, the applicant immediately submitted clarification stating that the Hostel management is under the control of Superintendent and thus he was not aware of the irregularities and there is no nexus with any financial misappropriation done by the Superintendent. Surprisingly, on 26/03/2018 the applicant came to be suspended by the Project Officer, I.T.D.P., Gadchiroli. Respondent no.3 issued charge sheet on 07/07/2018 levelling two charges in regard to dereliction of duties and depriving the Students from food by way of financial misappropriation in connivance with the Superintendent and Contractor.

3. The applicant had submitted his explanation, but it was not considered. The respondent no.3 issued communication dated

27/09/2018 observing that the applicant has admitted the charges in his explanation. He was asked to attend the office on 08/10/2018 for personal hearing for further needful action in the matter. The applicant appeared on 10/10/2018 before respondent no.3 and submitted his written representation.

4. At the time of hearing, the applicant repeatedly requested the respondent no.3 that being Head Master, he had taken every efforts for upgradation of School education, administration and utmost care had been taken in regard to good health and education of the Students. He has not committed any misconduct, but he has stated that if at all he has committed any mistake, he be pardoned.

5. The respondent no.3 misinterpreting the statement made by the applicant, passed an order of punishment stating that the applicant has admitted the guilt therefore inquiry is not necessary. The respondent no.3 passed punishment order withholding one increment permanently and suspension period treated as suspension period and also lump sum recovery of Rs.5,995/- on that condition he was reinstated.

6. The applicant has challenged the punishment order dated 18/12/2018 before respondent no.2. Respondent no.2 observed that there is infirmity in the order passed by R-3, but mechanically passed the order without assessing quantum of punishment properly. The

appeal was partly allowed by R-2. Hence, the applicant approached to this Tribunal for quashing the impugned order passed by respondent nos.2 and 3.

7. Heard Shri H.K. Pande, learned P.O. for the respondents. The O.A. is strongly opposed by respondent nos.2 and 3. It is submitted that the applicant was the Head Master. It was his duty to supervise the administration of the Ashram School. During the surprise visit, many irregularities were found and therefore the departmental inquiry was initiated. The statement of charges was given to the applicant. He has admitted the guilt and therefore further inquiry was not necessary. Looking to the charges proved against the applicant, proper punishment was ordered. It is further submitted by the respondents that the O.A. is hopelessly barred by limitation. It is not filed within one year from the date of passing of order by respondent no.2.

8. In the rejoinder, the applicant has stated that the delay was caused due to Covid,19. The Hon'ble Supreme Court has condoned the delay in many matters on the ground on Covid,19. The applicant has approached to this Tribunal within time.

9. Heard Shri R.M. Fating, learned counsel for the applicant. In respect of delay, the learned counsel for the applicant has pointed out the Judgment of Hon'ble Supreme Court in M.C.A. No. 21/2022

with connected matters, decided on 10/01/2022. The Hon'ble Supreme Court has clarified that due to Covid,19 the period from 15/03/2020 till 28/02/2022 shall stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act,1996. It is also directed that the period from 15/03/2020 till 28/02/2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. The applicant has filed the present O.A. on 31/01/2022. Therefore, in view of the Judgment of Hon'ble Supreme Court, the present O.A. is within limitation.

10. In respect of merit in the O.A., it appears that when the Committee in the office of Project Officer, Gadchiroli gave a surprised visit to the Ashram School, Rangi, some statements were recorded and stock register etc. were verified. They came to know from the stock register that there were some misappropriations done by Superintendent Shri N.R. Bukane. It was observed that being the Head Mater, applicant Shri P.M. Dahiwale was also responsible for the irregularities. Hence, both were given statement of charges.

11. The applicant has given explanation. In the explanation, he has denied the charge, but at the end he has stated that if he has committed any mistake, he may kindly be pardon. Respondent no.3

issued notice to the applicant dated 27/09/2018 directing him to remain present on 08/10/2018 stating that further departmental inquiry is not necessary, because, he has admitted the guilt. The applicant appeared on 10/10/2018. He has given detailed explanation stating that the Superintendent was posted at Ashram School and all the irregularities were in respect of Superintendent, Shri N.R. Bukane. The applicant was the Supervising Authority, he has no any concerned with the alleged misappropriation or irregularities committed by Shri N.R. Bukane. But at last, he has stated that if he has committed any mistake he should be pardon.

12. Respondent no.3 on 18/12/2018 passed the following impugned order –

“१) श्री. पी. एम. दाहिवले, माध्यामिक मुख्याध्यापक यांची महाराष्ट्र नागरा सेवा (शिस्त व अपील) नियम ११७९ च्या नियम ५ (१) मधील तरतुदनुसार पुढील एक वेतनवाढ कायमस्वरूपी यांबाविण्यात येत आहे.

२) श्री. पी. एम. दाहिवले, माध्यामिक मुख्याध्यापक यांचा निलंबन कालावधी हा निलंबन काळ म्हणून गृह्यात धरण्यात यावा.

३) श्री.पी.एम. दाहिवले, माध्यामिक मुख्याध्यापक यांचेकडून मालाची अपहार केलेला रक्कम ५९९५.३०/- रुपये एकमुस्त वसुल करण्यात यावी.

तदवतच श्री.पी.एम. दाहिवले, माध्यामिक मुख्याध्यापक यांना शासन सेवेत पुनःस्थापीत करण्यात येत असून त्यांची पदस्थापना प्रकल्प अधिकारी, एकात्मिक आदिवासी विकास प्रकल्प, गर्डाचरोला अंतगत शासकीय माध्यामिक आश्रमशाळा, कोरची जि. गर्डाचरोला येथील नाध्यामिक मुख्याध्यापक (विज्ञान) या पदावर करण्यात येत आहे. ”

13. The applicant challenged the said order before respondent no.2. Respondent no.2 has observed that the only applicant was held

guilty, there was no action against the Superintendent. Therefore appeal was partly allowed and passed the following order –

“निणय-

१. अपील अंशतः मान्य करण्यात येत आहे.
२. अपीलार्था यांची एक वेतनवाढ तात्पुरत्या स्वरूपात रोखण्यात येत आहे.
३. अपीलार्था यांचा निलंबन कालावधी हा निलंबन काळ म्हणून गृहीत धरण्यात यावा.
४. अपीलार्था यांनी केलेल्या आर्थिक गैरव्यवहाराच्या रक्कमेबाबत योग्य ती शहानिशा करून सदरची रक्कम एकरकमी वसूल करावी. ”

14. Being aggrieved by the order passed by respondent nos.2 and 3, the applicant approached to this Tribunal.

15. From the perusal of explanation given by the applicant, it appears that he has not admitted his guilt. He had given detailed explanation, but at the end he has stated that if he has committed any mistake, then he should be pardon. The explanations given by the applicant do not shows that the applicant has admitted the guilt, but respondent no.3 wrongly come to the conclusion that the applicant has admitted the guilt, therefore, further inquiry was not necessary. This act of respondent no.3 is against the departmental inquiry rules. As per the departmental inquiry rules, detailed inquiry is necessary. Respondent no.3 without holding any departmental inquiry passed the impugned order. Respondent no.2 has also not gone into details.

16. From the perusal of explanations given by the applicant, it appears that he was the Head Master of Ashram School, Rangi. Shri

N.R. Bukane was the Superintendent. All the duties of providing food, keeping stock register, updated were related to Shri Bukane. In the surprise visit, all the irregularities were found against Shri Bukane. It appears that the departmental inquiry was conducted against Shri Bukane. The punishment order against Shri Bukane is dated 08/01/2021. The following punishment was awarded to Shri Bukane.

“ त्याअर्था श्री. एन. आर. बुकने, अधीक्षक (पुरुष), यांना खालील प्रमाणे शिक्षेचे आदेश याद्वारे देण्यांत येत आहे.

१) श्री. एन. आर. बुकने, अधीक्षक (पुरुष) यांचे कडून महाराष्ट्र नागरो सेवा (शिस्त व अपील) नियम १९७९ मधील भाग तिन नियम ५ मधील पोर्टनियम (तीन) नुसार रक्कम १,२८,१०२ (अक्षरो रूपये एक लक्ष अठ्ठावीस हजार एकशे दोन फक्त) ची मुळ वसूली वेतनातून दोन वर्षाच्या आंत समान हफ्यात वसूल करण्यात यावी.

२) श्री. एन. आर. बुकने, अधीक्षक (पुरुष), यांना महाराष्ट्र नागरो सेवा (शिस्त व अपील) नियम, १९७९ नियम ५ (१) मधील तरतुदोनुसार एक वर्षासाठी तात्पुरती एक वेतनवाढ थांबविण्यात येत आहे.

३) श्री. एन. आर. बुकने, अधीक्षक (पुरुष), यांचा निलंबन काळ हा कतव्य कालावधी म्हणून संबोधण्यात येत आहे. आदेशाची अमंलबजावणी तात्काळ व्हावी. ”

17. From the comparison of punishment awarded to the applicant and Shri Bukane, it appears that the suspension period of the applicant is treated as a suspension period, whereas, the suspension period of Shri Bukane was treated as a duty period. Serious charges were proved against Shri Bukane. As per the punishment order, recovery of Rs. 1,28,102/- was directed to be recovered from Shri Bukane. The respondent no.2 in the appeal by applicant has modified the punishment order and recovery of Rs.5,995/- was quashed and set aside. But, maintained other

punishments, i.e., in respect of stoppage of one increment temporarily and suspension period was treated as a suspension period.

18. The charges levelled against Shri Bukane, were serious. Those charges were proved against Shri Bukane by holding departmental inquiry. But, he was given lenient punishment. There was no departmental inquiry against the applicant, though he has specifically denied the charges. Moreover, the applicant was not responsible for the misappropriation or irregularities found in the work of Superintendent Shri Bukane. There was a specific post of Superintendent in the Ashram School to provide food, to purchase vegetables, fruits, meats etc. from the open Market and provide to the Students regularly. The Superintendent was duty bound to maintain stock register etc. All those charges were against Shri Bukane and only Supervisory Authority was with the applicant.

19. Looking to the charges levelled against Shri Bukane, he was given a less punishment. The suspension period of Shri Bukane was treated as a duty period, whereas, the suspension period of the applicant was treated as a suspension period. There was departmental inquiry against Shri Bukane. It is against the principle of natural justice. Hence, the impugned order passed by respondent nos.2 and 3 appears to be not legal and proper. Therefore, the following order is passed –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned orders passed by respondent nos.2 and 3 are hereby quashed and set aside.
- (iii) The respondents are directed to pay the consequential benefits to the applicant.
- (iv) No order as to costs.

Dated :- 28/03/2023.

*dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 28/03/2023.