MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 529 OF 2015

DISTRICT: - JALGAON.

Shri Gangaram S/o Natu Shirsath,

Age: - 73 years, Occu: Retired, R/at: C/o Narendar G. Shirsath, Kasliwal Classics, Darga Road, Tapadiya Nagar, Phase I, C-1/2 Aurangabad.

.. APPLICANT.

VERSUS

1. The State of Maharashtra,

Through its Secretary,
Shaleya Shikshan and Krida
Vibhag, Mantralaya,
Mumbai-32
(Copy to be served on Presenting
Officer, M.A.T., Bench at Aurangabad)

The Education Director (Secondary and Higher Secondary),

Maharashtra State, Pune.

3. The Deputy Director of Education Department,

Nashik Tal. and Dist. Nashik.

4. The Auditor,

General Maharashtra (Lekha and Aungeta), Mumbai.

5. The Chief Executive Officer,

Zilla Parishad Jalgaon Through the Treasury Officer, Jalgaon, Zilla Parishad Building, Jalgaon.

.. RESPONDENTS

APPEARANCE: Shri R.P. Bhumkar – learned

Advocate for the applicant.

Shri S.K. Shirse – learned Presenting

Officer for the respondents.

CORAM : HON'BLE SHRI J.D. KULKARNI,

VICE CHAIRMAN (J)

DATE: 24^{TH} AUGUST, 2017.

ORDER

1. Heard Shri R.P. Bhumkar – learned Advocate for the applicant and Shri S.K. Shirse – learned Presenting Officer for the respondents.

2. In this Original Application the applicant has claimed the relief to quash and set aside the orders dated 29.05.2007 and 03.06.2013 passed by the respondent No. 1 on the basis of implementation letter issued by the respondent No. 4 dated 24.03.2015. He is also claiming direction to respondent No. 1 to pay full pension to him from 01.01.2002 to 02.06.2013 and also direct the respondents to pay all arrears of pension deduction amount with interest.

- 3. The applicant has retired on superannuation as Education Officer, Zilla Parishad and acting Principal of DIET Jalgaon on 31.12.2001. The departmental enquiry was initiated against him on 15.02.2002 on the false report submitted by one Shri Sanjay Mukundrao Patil. In the said enquiry the applicant was alleged to have controverted the Rule 3(1) (i) (ii) (iii) of the Maharashtra Civil Services (Conduct) Rules, 1979.
- 4. In all 6 charges were leveled against the applicant in departmental enquiry, which were as under: -

"दोषारोप क्रमांक 9:- श्री शिरसाठ यांनी उक्त पदावर उक्त कालावधीत कार्यरत असतांना जळगांव जिल्हा मराठा विद्याप्रसारक सहकारी समाज मर्यादित, जळगांव या संस्थेत २१ शिक्षक /शिक्षकेतर कर्मचारी अतिरिक्त असतांना या अतिरिक्त शिक्षकांचे समायोजन करण्यापूर्वी नवीन शिक्षकांच्या नियुक्त्यांना मान्यता दिली. श्री. शिरसाठ यांची कृती महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ नियम ३ (१) (एक)(दोन) (तीन) चा भंग करणारी आहे.

दोषारोप क्रमांक २ :- श्री शिरसाठ यांनी उक्त पदावर उक्त कालावधीत कार्यरत असतांना जळगांव जिल्हा मराठा विद्याप्रसारक सहकारी समाज मर्यादित या संस्थत वाद असतांना व प्रकरण धर्मादाय आयुक्तांकडे न्यायप्रविष्ठ असतांना नवीन नियुक्त्यांना मान्यता दिली. शिरसाठ यांची कृती महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ नियम ३ (१) (एक)(दोन) (तीन) चा भंग करणारी आहे.

दोषारोप क्रमांक ३ :- श्री शिरसाठ यांनी उक्त पदावर उक्त कालावधीत कार्यरत असतांना अतिरिक्त कर्मचा-यांची नोंदवही अद्ययावत व योग्य प्रकारे ठेवली नाही. परिणामी शिक्षक /शिक्षकंतर कर्मचारी कधी अतिरिक्त ठरले, कोणत्या आदेशान्वये

त्यांचे समावेशन झाले व ते कधी रूजू झाले इ. बाबतची माहिती नोंदवहीत उपलब्ध नाही. श्री. शिरसाठ यांची कृती महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ नियम ३ (१) (एक)(दोन) (तीन) चा भंग करणारी आहे.

दोषारोप क्रमांक ४:- श्री शिरसाठ यांनी उक्त पदावर उक्त कालावधीत कार्यरत असतांना जळगांव जिल्हा मराठा विद्याप्रसारक सहकारी समाज मर्यादित, जळगांव या शिक्षण संस्थेत अधिकृत कार्यकारिणी अस्तित्वात नसतांना देखील नवीन नियुक्त्यां, बदल्या व पदोन्नत्या इतयादींना मान्यता दिली. तसेच श्री आर. एल. सावकारे, उपशिक्षक हे शिस्तभंगविषयक कारवाईस पात्र असतांना देखील त्यांना प्रभारी मुख्याध्यापक म्हणून मान्यता दिली व रद्द केली. श्री. शिरसाठ यांची कृती महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ नियम ३ (१) (एक)(दोन) (तीन) चा भंग करणारी आहे.

दोषारोप क्रमांक ५:- श्री शिरसाठ यांनी उक्त पदावर उक्त कालावधीत कार्यरत असतांना शाळेत काम करित नसलेल्या शिपायांचे वेतन काढून शासनाचे रू. ७०,०००/- एवढे आर्थिक नुकसान केले आहे. श्री. शिरसाठ यांची कृती महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ नियम ३ (१) (एक)(दोन) (तीन) चा भंग करणारी आहे.

दोषारोप क्रमांक ६ :- श्री शिरसाठ यांनी उक्त पदावर उक्त कालावधीत कार्यरत असतांना जळगांव जिल्हा मराठा विद्याप्रसारक सहकारी समाज मर्यादित, जळगांव या संस्थितील ५ अतिरिक्त शिक्षकांचा इतरत्र समावेश झालेले नसतांना देखील नवीन नियुक्त्यांना मान्यता दिली. परिणामतः या ५ अतिरिक्त शिक्षकांचे वेतन त्यांना विना कार्यभार अदा केले जाते. शासनाच्या अशा प्रकारे होणा-या लाखो रूपयांच्या नुकसानीस श्री शिरसाठ जबाबदार असून श्री. शिरसाठ यांची कृती महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ नियम ३ (१) (एक)(दोन) (तीन) चा भंग करणारी आहे."

5. In view of the said charge-sheet the departmental enquiry was conducted and the State of Maharashtra vide order dated 29.5.2007 passed the following order:-

- "५. ज्याअर्थी श्री. शिरसाठ यांनी दिनांक २७.३.२००६ च्या ज्ञापनाव्दारे बजावण्यात आलेल्या दुसरी कारणे दाखवा नोटीशीवर, त्यांच्या दि. १३.४.२००६ च्या पत्राव्दारे बचावाचे निवेदन सादर केले असून, दोषारोप सिध्द होतात, या चौकशी अधिका-यांच्या निष्कर्षाशी सहमती दर्शवून प्रस्तावित शिक्षा अंमलाव न आणण्याची विनंती केली. तथापि, श्री शिरसाठ यांनी सादर केलेल सदर निवेदन समर्थनीय नसल्याने त्यांच्या सेवानिवृत्ती वेतनातून २५ टक्के कायमस्वरूपी कपात करण्याची शिक्षा कायम करण्याचा निर्णय शासनाने घेतला.
- ६. श्री. शिरसाठ यांच्या सेवानिवृत्ती वेतनातून २५ टक्के कायमस्वरूपी कपात करण्याच्या प्रस्तावित शिक्षेस महाराष्ट्र लोकसेवा आयोगाने सहमती दर्शविलेली आहे.
- ७. त्याअर्थी महाराष्ट्राचे राज्यपाल म्हणून महाराष्ट्र नागरी सेवा (निवृत्ती वेतन) नियम १९८२ च्या नियम २७ अन्वये प्रदान करण्यात आलेल्या शक्तीचा वापर करून श्री. शिरसाठ यांच्या सेवानिवृत्ती वेतनातून २५ टक्के कायमस्वरूपी कपात करण्याचे आदेशित करण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,"

6. Being aggrieved by the order as aforesaid the applicant had preferred an appeal before His Excellency Hon'ble the Governor. Vide impugned order dated 9.6.2013, on behalf of His Excellency Hon'ble the Governor, the Hon'ble Minister, Woman and Child Development, Maharashtra State was pleased to modify the order of punishment by observing as under:

"चौकशी अधिका-यांनी दिनांक २९.१०.२००४ च्या पत्रान्वये शासनास सादर केलेल्या चौकशी अहवालानुसार श्री. शिरसाठ यांचेविरुध्द ठेवण्यात आलेले १ ते ६ दोषारोप पुर्णतः सिध्द झाले आहेत. चौकशी अहवालाच्या अनुषंगाने श्री शिरसाठ यांनी दि. १०.१.२००५ च्या पत्राव्दारे सादर केलेल्या अभिवेदनान्वये चौकशी अधिका-यांच्या निष्कर्षाशी असहमती दर्शवून रितसर विभागीय चौकशी दरम्यान दि. १८.८.२००४ च्या निवेदनाव्दारे सादर केलेल्या बचाव निवेदनाशी बांधील असल्याचे कळवून चौकशी अधिका-यांच्या निष्कर्षाशी असहमत झाल्याच्या पृष्ठर्थ सविस्तर बचाव तसेच कोणतीही अतिरिक्त कागदपत्रे सादर केली नाहीत. चौकशी अधिका-यांचे निष्कर्ष व श्री. शिरसाठ यांच्याविरुध्द सिध्द झालेल्या दोषारोपांचे गांभीर्य विचारात घेउन त्यांच्या सेवानिवृत्ती वेतनातून २५ टक्के कायमस्वरूपी कपात करण्यांची शिक्षा दिनांक २९.७.२००७ रोजी आदेशित करण्यात आली आहे.

सदरहू शिक्षेविरुध्द श्री. शिरसाठ यांनी मा. राज्यपाल महोदयांना अपिल सादर केले आहे. सदर अपिल अर्जावर दिनांक ३१.५.२०११ रोजी माझ्या दालनात झालेल्या सुनावणीच्या वेळी श्री.शिरसाठ यांनी त्यांची बाजू मांडली व रिट पिटीशन नं. ३०७८/१९९९ मध्ये दि. ६.७.९९ रोजी उच्च न्यायलय, औरंगाबाद बेंच यांनी दिलेल्या निर्णयानुसार शिक्षकांच्या नवीन नेमणूका केल्या असल्याचे सांगून त्यांच्यावरील दोषारोप अमान्य केले व दि. ६.७.९९ च्या निर्णयाची प्रत सादर केली आहे. तसेच त्यांनी चौकशी दरम्यान चौकशी अधिका-यांनी त्यांचे म्हणणे विचारात न घेता साक्षीदारांच्या दबावाखाली चौकशीचे चुकीचे निष्कर्ष नोदविल्याचे सांगितले.

श्री. शिरसाठ यांनी रितसर विभागीय चौकशी दरम्यान नवीन नियक्त्यांना मान्यता देताना उच्च न्यायालय, औरंगाबाद बेंच यांनी दि. ६.७.९९ रोजी दिलेल्या याचिका कृ. ३०७८/१९९९ मधील अंतरिम आदेशाचा अवमान होऊ नये म्हणून मान्यता केल्याचे तसेच संस्थेने या आदेशांची अंमलबजावणी न केल्यास दि. ३१.७. १९९९ रोजी अवमान याचिका दाखल करण्याची धमकी वजा सूचना दिल्याचे नमूद केले आहे. म्हणून न्यायनिर्णयाच्या आदेशाची अंमलबजावणी करण्याच्या शुध्द हेतूने व अवमान याचिका दाखल होऊ नये म्हणून परिस्थितीवश मान्यता प्रदान करावी लागले असल्याचे संगितले. सद्यःस्थितीत श्री. शिरसाठ यांना निवृत्त होऊन जवळ

जवळ १० वर्षांचा कालावधी झालेला आहे. सदर १० वर्षांचा कालावधीत त्यांच्या सेवानिवृत्ती वेतनातून दरमहा २५ % प्रमाणे वसूली करण्यात आलेली आहे.

उपरोक्त सर्व वस्तुस्थितींचा विचार करता श्री. शिरसाठ यांच्यावर सदर प्रकरणी अन्याय झाल्याचे दिसून येते म्हणून शासनाच्या सदर आदेशात हस्तक्षेप करणे आवश्यक वाटते. म्हणून या प्रकरणी मी पुढीलप्रमाणे आदेश देत आहे -

आदेश

"अर्जदाराचा अर्ज अंशतः मंजूर करण्यात येत आहे. त्यांच्या निवृत्तीवेतनातून २५ टक्के रक्कम यापूर्वीच १० वर्षे कपात करण्यात आली आहे. ही शिक्षा अर्जदारास पुरेशी आहे, म्हणून सदर आदेश निर्गमित केल्याच्या तारखेपासून त्यांच्या निवृत्तीवेतनातून २५ टक्के रक्कम कपात करण्यात येवू नये.

वरील प्रमाणे सर्व संबंधितास कळवून प्रकरण बंद करण्यात येत आहे."

- 7. Being aggrieved by the order as aforesaid this Original Application has been filed.
- 8. Learned Advocate for the applicant submits that the impugned orders are non-speaking one and conclusions drawn are not legal and proper. The enquiry report does not quantify or estimate the loss caused to the Government. There was absolutely no reason to invoke Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, as misconduct alleged on the part of the applicant was not grave. It is stated that mere deduction of punishment is not sufficient and justified. There is

nothing in the law to suggest that the Education Officer was to absorb the surplus employees before issuing approval. The Education Officer is not appointing authority and, therefore, he has not committed any wrong.

- 9. Learned Advocate for the applicant Shri R.P. Bhumkar submitted that the action taken by the applicant was approved by the Hon'ble High Court and the applicant was forced to pay salary since the Hon'ble High Court has directed to do so. In support of his contention, the learned Advocate for the applicant has placed on record some orders passed in W.P. No. 3078/1999 in the case of SHRI RAMESH NAMDEO PATIL AND OTHERS VS. STATE OF MAHARASHTRA AND OTHERS. All these copies are placed on record, which are marked as Exhibit 'X' Collectively for the purposes of identification.
- 10. Perusal of the various orders placed on record as aforesaid shows that the Hon'ble High Court directed to release the salaries of the staff members forthwith in respect of petitioner Nos. 1 to 5 therein and further grant

approval to the transfers and appointments of the staff members, pending the admission of the Writ Petition.

- 11. I have perused various orders placed on record. It is material to note that the applicant was acting as Education Officer at the relevant time and in his capacity as an Education Officer, he has sanctioned 27 posts including teachers / non-teachers staff though the posts were in excess and this has caused financial loss to the Government. By virtue of the order passed by the Hon'ble High Court the excess / surplus teachers were required to pay salary.
- 12. perused the enquiry report have the departmental enquiry against the applicant. I feel that there are no serious challenges to the enquiry conducted by the department against the applicant. It seems that in all 11 witnesses were examined by the department and full opportunity was given to the applicant to defend the Perusal of the enquiry report shows that the enquiry. enquiry officer has applied his mind and has appreciated the evidence with a proper perspective and recommended

the applicant's case for punishment. The competent authority, after considering the report and the documents, decided to deduct 25% amount from the pension permanently. The competent authority before inflecting punishment also gave opportunities to the applicant by issuing show cause notices. In such circumstances, I do not find any illegality committed by the respondent No. 1 in inflecting the punishment.

13. The applicant has preferred appeal before His Excellency Hon'ble the Governor and the competent Minister, who was authorized to deal with an appeal, has considered all the aspects. The Appellate Authority has also considered the fact that the Government was required to pay salaries of 5 employees though they were excess / surplus than the available strength and because of the direction given by the Hon'ble High Court sanction was granted for their services and even the payment was required to be made to them. Considering the aspect that the respondents were required to sanction these posts and to pay the amount with directions of the Hon'ble High

Court, the Appellate Authority has taken lenient view against the applicant and decided to stop deduction of 25% of the pension amount of the applicant, but with prospective effect. The observation made by the Appellate Authority, as already reproduced, clearly shows that the Appellate Authority had applied mind while reducing punishment of the applicant.

- 14. Learned Presenting Officer submits that the Appellate Authority has already taken lenient view against the applicant and, therefore, the order passed by the Appellate Authority is perfectly legal and proper. I fully agree with the learned Presenting Officer in this regard.
- 15. Learned Advocate for the applicant submits that the order passed by the applicant granting sanction to the post has been upheld by the Hon'ble High Court. I am unable to accept this contention for the simple reason that because of the orders passed by the Hon'ble High Court, the salary was required to be paid to the employees, who are in excess of available strength. The Hon'ble High

Court might have directed the respondents to pay salary to the petitioners in the Writ Petition, who were not responsible for their appointment and since the employees had actually worked, they were entitled to claim salary for the work done by them. Had the applicant properly done his duty sincerely and honestly, no excess staff should have been appointed and the Government need not have to pay salary to them. Because of the negligent act of the applicant, the Government was required to pay salary and, therefore, the applicant had definitely caused loss to the Government. The Appellate Authority has already taken a lenient view in not dismissing the appeal in toto. In fact, the Appellate Authority has considered the fact that the applicant has already retired and that 25% amount from the pension of the applicant has already deducted for about 10 years. The Tribunal is not expected to go into the merits of the matter, such as appreciation of evidence etc. of the administrative action taken by the Competent Authorities. I am, therefore, satisfied that the Appellate Authority has applied its mind to the facts and the issues

raised by the applicant and, therefore, it is not a fit case to interfere. Hence, the following order: -

ORDER

The present Original Application stands dismissed with no order as to costs.

VICE CHAIRMAN (J)

O.A.NO.529-2015(SB)-HDD-2017punishment recovery