

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 812 / 2018 (S.B.)**

Shri Vijayanand S/o Digambar Nandpurkar,
Aged about 53 years, Occ. Teacher,
R/o Government Ashram School,
Sonurli Post : Jalka, Tahsil : Kelapur,
District : Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai- 32.
- 2) The Commissioner,
Tribal Development Department,
Old Agra Road, Gadkari Chowk,
Matoshree Nagar, Nashik,
Maharashtra-422 002.
- 3) Additional Commissioner,
Tribal Development Department,
Behind Police Head Quarter,
Maltekdi, Amravati.
- 4) Assistant Collector Cum Project Officer,
Integrated Tribal Development Project,
Tahsil Pandharkawda,
District : Yavatmal.
- 5) Head Master,
Government Secondary Ashram School,
Sonurli, Tahsil : Kelapur,
District : Yavatmal.

Respondents

Shri G.N.Khanzode, Id. Advocate for the applicant.

Shri V.A.Kulkarni, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 07th Oct., 2022.

Judgment is pronounced on 11th Oct., 2022.

Heard Shri G.N.Khanzode, ld. counsel for the applicant and Shri V.A.Kulkarni, ld. P.O. for the Respondents.

2. Case of the applicant is as follows. On 04.08.2018 the applicant was working as a Teacher in Government Ashram School at Sonurli, Tah. Kelapur, District Yavatmal. Respondent no. 4 issued him a show cause notice dated 10.08.2018 (A-2) that on 04.08.2018 when M.L.A. Shri Uikey had visited the school no teacher was present and students were noticed to be roaming outside the school premises. The applicant was called upon to submit his explanation within 24 hours. On 14.08.2018 the applicant submitted a detailed reply (A-3) to the show cause notice. The applicant received another show cause notice also dated 10.08.2018 (A-4) from respondent no. 4 and gave a reply (A-5) to it. Respondent no. 4 then passed the impugned order dated 12.09.2018 (A-6) imposing punishment of withholding of one increment permanently. Hence, this O.A..

3. Reply of respondent no. 4 is at pp. 27 to 30. According to the respondent no. 4 the impugned order cannot be faulted either on facts or in law and hence the O.A. deserves to be dismissed.

4. The impugned order states:-

“आदेश

मा. श्री अशोकरावजी उईके, आमदार, राळेगाव विधानसभा व मा. सहाय्यक जिल्हाधिकारी तथा प्रकल्प अधिकारी यांनी दिनांक ०४.०८.२०१८ रोजी शासकीय माध्यमिक आश्रम शाळा, सोनुर्ली ता. केळापूर जि. यवतमाळ येथे भेट दिली असता, शाळेचा परिसर सोडून विद्यार्थी बाहेरच्या आवारात फिरतांना दिसली. तसेच वर्ग १० वी चे जादा क्लासेस घेणेकरीता एकही शिक्षक उपस्थित असल्याचे दिसून आले नाही. त्यामुळे मा. श्री अशोकरावजी उईके, आमदार, राळेगाव विधानसभा यांनी तिव्र नाराजी व्यक्त केलेली आहे. यावरून आपण शासकीय कामामध्ये निष्काळजीपणा व हलगर्जीपणा केल्याने कर्तव्यात कसूर केल्याचे सिद्ध होते ही अत्यंत खेदजनक व गंभीर बाब असल्याने संदर्भ क्रमांक ३ नुसार श्री व्ही.डी.नंदपुरकर, माध्यमिक शिक्षक व श्री.एन.एन.गावंडे, माध्यमिक शिक्षक यांना कारणे दाखवा नोटीस बजावण्यात आलेली आहे.

संदर्भ क्रमांक ४ व ५ नुसार श्री.व्ही.डी.नंदपुरकर, माध्यमिक शिक्षक व श्री.एन.एन.गावंडे, माध्यमिक शिक्षक यांनी त्यांचे कारणे दाखवा नोटीसचा खुलासा या कार्यालयास सादर केलेला आहे. तथापी, त्यांचा खुलासा समाधानकारक वाटत नसल्याने संदर्भ क्रमांक १ व २ चे अधिकाराचा वापर करून मा. सहाय्यक जिल्हाधिकारी तथा प्रकल्प अधिकारी हे महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम क्रमांक १९७९/भाग-तीन नियम ५(अ)(१)(चार)नुसार श्री.व्ही.डी.नंदपुरकर, माध्यमिक शिक्षक व श्री.एन.एन.गावंडे, माध्यमिक शिक्षक यांची एक वेतनवाढ कायमस्वरूपी रोखण्याचे आदेशीत करण्यात येत आहे.

आदेशाची अंमलबजावणी तात्काळ करण्यात यावी.”

5. Shri Khanzode, Id. Counsel for the applicant submitted that though the impugned punishment was a minor penalty as per Rule 5(1)(IV) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, it could not have been imposed without complying with Rule 10 (2) of said Rules. Relevant portion of Rule 10 of said Rules reads as under:-

“10. Procedure for imposing minor Penalties

(1) Save as provided in sub-rule (3) of rule 9, no order imposing on a Government servant any of the minor penalties shall be made except after-

*(a)*****

(b) holding an inquiry in the manner laid down in rule 8, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

*(c)*****

*(d)*****

*(e)*****

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increment of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period [the words or to impose any of the penalties specified in clauses (v) and (vi) of sub-rule (1) of the rule (5)], an inquiry shall be held in the manner laid down in sub- rules (3) to (27) of rule 8, before making any order of imposing on the Government servant any such penalty.”

6. It is apparent that if the impugned order is allowed to stand, the applicant would be visited by consequence of reduction in pension envisaged in Rule 10 (2) and hence, such punishment could not have been imposed without holding an inquiry in the manner laid down in Rules (3) to (27) of Rule 8 of said Rules. Admittedly, no such inquiry was held before passing the impugned order. This being the factual and legal position the impugned order cannot be sustained. It is accordingly

quashed and set aside. The applicant would be entitled to get all the benefits flowing from this determination. **The same shall be paid within two months from today.** No order as to costs.

(Shri M.A.Lovekar)
Member (J)

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 11/10/2022.
and pronounced on

Uploaded on : 12/10/2022.