IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.1052 OF 2015

DISTRICT : THANE

Shri Baliram A. Dhonde.)
Aged : 58 Yrs, Occu.: Retired Head Master)
of Medium Ashram School, Tava, Tal.:)
Dahanu, District : Thane and R/at)
Pavandeep Apartment, Room No.101,)
Kamal Nagar, Char Poli, Shahapur,)
Tal.: Shahapur, District : Thane 421 601.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Joint Commissioner of)
Tribal Development Department,)
Thane.)

2. The Project Officer.)
Integrated Tribal Development)
Project, Dahanu, Tal.: Dahanu,)
District : Thane.)**...Respondents**

Mr. J.N. Kamble, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 18.01.2017

JUDGMENT

1. This Original Application is moved by a retired Head Master who has suffered an order by the Assistant Collector and Project Officer, Tribal Development under the Respondent No.1 – State of Maharashtra, whereby his next increment was stopped without cumulative effect. That in fact is the last increment that he could draw in view of the impending retirement. The said order came to be confirmed in appeal by the competent Appellate Authority by his order of 4th June, 2016 who held that since the order of the Hon'ble Chairman of this Tribunal in OA 27/2016 was pending, it would be awaited. Both these orders are the subject matter of this OA.

2. I have perused the record and proceedings and heard Mr. J.N. Kamble, the learned Advocate for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer (PO) for the Respondents.

3. The sum and substance of the case of the Applicant is that the Ashram School at a place called Tava in Taluka Dahanu, District Palghar came to be inspected

by the concerned authority and the Hon'ble Minister of State. The School is supposed to impart instructions to the students from 1st to 12th Standard in Arts and Science. Further, there was no premises sufficient for the residence of the students, and therefore, it appears that the Applicant himself put up a CI Tin shed and conducted the classes there. In the said inspection, it was further found that the students did not have even somuch of knowledge of English language as to correctly spell the name of their Village. In this set of facts, the first impugned order was made apparently under the provisions of Rule 5(1)(iv) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which in fact provides for one of the minor penalties. There is no reference in the said order to the provisions of Rule 10 of the said Rules. Before the issuance of the said order, a show cause notice was issued on 3rd September, 2013. On 17.9.2013, the Applicant showed cause. He stated therein *inter-alia* that in the School, there were benches for the students from Standard 9 to 12 and in the same room, the students were also required to sleep at night. There was always an apprehension that at night, the benches placed one over the other might fall on the students, and therefore, in these circumstances, a temporary structure was put up by him and he had no other motive except to make sure that the students did not

get injured by a possible fall of furniture. He undertook that in future such an act would not be committed. As far as the spelling aspect of the matter is concerned, there was no regular English Teacher for the past two years. Teachers were appointed on clock hourly basis. The Applicant took over only from the 2nd Session of 2012 in December of that year. The knowledge of the students of English language was very poor. He made attempts to make improvement in that behalf and some times, he even imparted training in the basics of English language. The students attempted to give reply to the questions but ultimately mistakes may have occurred.

4. The appellate order is at Exh. 'G' (Page 33 of the Paper Book (PB)). The above referred facts were set out and thereafter, straightway, the conclusions were drawn without giving any reason and it was mentioned that OA 27/2016 has been filed by the Applicant in this Tribunal and on that basis, the said appeal was disposed of. Somewhat curiously, it appears that no such OA was brought by the Applicant in this Tribunal but the fact still remains that, that was no way that the appeal ought to have been decided by the Appellate Authority. I place on record my complete disapproval with regard to the manner in which the appeal was disposed of and there is a strong

reason to believe that even the facts were not correctly mentioned. Assuming that the Appellate Authority wanted to imply that this OA was pending, still there was no reason why he should not have decided the appeal as a competent Appellate Authority.

5. Now, the above discussion would show that the last increment in his career was in the manner of speaking stopped or withheld in so far as the Applicant was concerned. It undoubtedly, would affect his pension, and therefore, although no authority has made reference to Rule 10(2) of the MCS (D & A) Rules, but that would surely become applicable. For the sake of facility, it would be appropriate to reproduce the entire Rule 10, so as to have a proper focus thereon.

> "**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-
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> (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;
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> (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) taking into consideration the representation, if any, submitted by the Government servant under Clause (a) of this rule and the record of inquiry, if any, held under Clause (b) of this rule;

(d) recording a finding on each imputation of misconduct or misbehavior ; and

(e) consulting the Commission, where such consultation is necessary.

(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 9a) 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.

(3) The record of the proceedings in such cases shall include-

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement or imputations of misconduct or misbehavior delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;
(v) the advice of the Commission, if any;
(vi) the findings on each imputation of misconduct or misbehavior; and
(vii) the orders on the case together with the reasons therefor."

6. If one has due regards to the provisions of Rule 10(2), it would become very clear that the procedure as laid down under Rule 8 ought to have been followed in this particular matter. It is not even the case of the Respondents that this procedure was followed. As a matter of fact, all that was done was issuance of show cause notice, receipt of the cause shown by the Applicant and rendering of the impugned order. This certainly is not in keeping with either the letter or spirit of the said Rule.

7. In so far as the Rules under consideration are concerned, they are an instance of codification, if that word is used with reference to context, of the principles of natural justice and the compliance therewith has got to be strictly in accordance therewith and if that is not done, then it is not an instance of curable irregularity but it is an instance of incurable illegality which goes to the root of the matter. In my opinion, therefore, the impugned orders will have to be quashed and set aside.

8. I exercise the jurisdiction of judicial review of administrative action with all its well known constraints and restraints and restrictions but still if I were to, within those constraints, still examine the impugned order and the two main causes which are the undoing of the Applicant, there was a lot to be said against the same. It could have been possible to be held that the Applicant has been made the recipient of the rough side of the stick really for not much of his fault. However, in view of the fact that now the fate of this OA can be decided on the earlier aspect of the matter, I would perhaps not delve deep there into. Similarly, in so far as the facts falling within Prayer Clause (c) are concerned, they are left undecided and if so advised, the Applicant may still pursue the remedy therein. I express no opinion thereabout.

9. Mrs. A.B. Kololgi, the learned PO relied upon an unreported Judgment of the Hon'ble Supreme Court in **Civil Appeal No.11975/16 (arising out of SLP (C) No.30710 of 2014) (Chief Executive Officer, Krishna District Cooperative Central Bank Ltd. and Anr. Vs. K. Hanumantha Rao and Anr., dated 9th December, 2016)(Coram: His Lordship the Hon'ble Shri Justice A.K. Sikri and His Lordship Hon'ble Shri Justice A.M. Sapre)**. She laid particular emphasis on the observations of Their Lordships that even if the Hon'ble High Court was

to hold that the penalty was shockingly disproportionate, the matter would have to be remanded to the disciplinary authority for imposition of lesser punishment and the Court cannot on its own impose a penalty. Now, this is a matter where the very DE suffers from incurable illegality and the issue is not just of the quantum of punishment. Therefore, if the principles laid down by the Hon'ble Supreme Court are applied to the present facts, in my view, the conclusions would be the one that I am driving at.

10. For the foregoing, the orders herein impugned are quashed and set aside. The punishment imposed on the Applicant is also quashed and set aside and the Respondents are directed to work out the emolument and pensionary aspect of the case of the Applicant as if the impugned orders were never passed. Compliance within two months from today. The Original Application is allowed to this extent with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
18.01.2017

Mumbai
Date : 18.01.2017
Dictation taken by :
S.K. Wamanse.
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