

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 604/2022(S.B.)**

Kisan Tryambak Kene,
Age 39 yrs. Occu.: Clerk cum Typist,
R/o. C/o. District Supply Officer,
Buldhana, Dist. Buldhana.

Applicant.

Versus

1. The State Of Maharashtra,
through its Secretary
Food Supply Department,
Mantralaya, Mumbai-32.
2. The Commissioner,
Amravati Division Amravati.
3. The Collector, Buldhana.
4. The District Supply Officer, Buldhana.

Respondents.

Shri P.S.Kshirsagar, Ld. Counsel for the applicant.
Smt.A.Warjekar, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman
Dated:- 2nd September, 2024.

JUDGMENT

Heard Shri P.S.Kshirsagar, learned counsel for the applicant and Smt.A.Warjekar, learned P.O. for the Respondents.

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

The applicant is working as a Clerk Typist in the District Supply Office at Buldana. The applicant submitted information regarding vacant post in the office of Supply Department of Buldana District. While sending the information one post of Awwal Karkoon was wrongly shown vacant at Tahsil Office, Buldana instead of District Supply Office, Buldana. This information was sought for granting compassionate appointment. The information was sent by the signature of District Supply Officer to the office of Commissioner, Amravati by E-mail. On 25.01.2022, on the very next date the entire information in all categories was submitted by office of District Supply Officer to the Office of Commissioner in which specifically note was given that there are actual vacant post of Awwal Karkoon in the office of District Supply Officer at Jalgaon Jamod Office and thereby fact was brought in the notice that one post of Awwal Karkoon was vacant in the office of District Supply Officer at Buldana. A Divisional Commissioner without considering the information of vacant post sent on 25.01.2022 relying on the information dated 24.01.2022, granted appointment on compassionate ground to one of

the candidate in the office of Tahsil Office Buldana, but said post was not vacant. The respondents issued show cause notice on 03.02.2022 by which the applicant was directed to give explanation. The respondent without initiating any departmental enquiry passed the impugned order dated 08.02.2022 by which three increments of the applicant are stopped. Hence, the applicant has filed the present O.A. for the following reliefs-

1. Quash and set aside the order dated 23/03/2022 (Anex. No. 13) in Appeal No. 02/MCS(Discipline and Appeal) Rule 1979/Buldhana/2022 passed by respondent No. 1 Divisional Commissioner Amravati and order dated 08/02/2022 (Anex No.10) passed by Collector Buldhana in order No. 50/2022 whereby the punishment of withholding 3 increments without affecting further salary for 3 years has been imposed against the applicant without holding the enquiry and without complying the Rule 10 of MCS (Discipline and Appeal) Rule 1979;

II. Stay to the order dated 23/03/2022 (Anex. No. 13) in Appeal No.02/MCS(Discipline and Appeal) Rule 1979/Buldhana /2022 passed by respondent No. 1 Divisional Commissioner Amravati and order dated 08/02/2022 (Anex No. 10) passed by Collector Buldhana in order No. 50/2022 during the pendency of the present original application before this Hon'ble Court;

III. Any other relief may be granted in favor of Applicant in the fact and circumstances of the case.

10. INTERIM ORDERS IF ANY, PRAYED FOR-

By way of Interim order grant Interim stay to the order dated 23/03/2022 (Anex.No.13 in Appeal No. 02/MCS(Discipline and Appeal) Rule 1979/Buldhana/2022 passed by respondent No.1 Divisional Commissioner Amravati

and order dated 08/02/2022 (Anex No. 10) passed by Collector Buldhana in order No. 50/2022 during the pendency of the present original application before this Hon'ble Court.

3. The O.A. is strongly opposed by the respondents. It is submitted that because of the wrong submissions made by the applicant, one candidate was appointed on compassionate ground at Tahsil Office Buldana.

4. Heard learned counsel for the applicant Shri P.SKshirsagar. As per his submission, on the next date i.e. on 25.01.2022 mistake was corrected by the applicant. The learned counsel for the applicant has submitted that the correct information was prepared on 24.01.2022 itself and it was submitted on 25.01.2022. The applicant has not committed any intentional mistake. The respondent without any departmental enquiry / preliminary enquiry has imposed punishment.

4. The learned counsel for the applicant has pointed out Rule 10 (3) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. As per Rule 10 (3), the respondents have to give show cause notice along with evidence and material documents. Rule 10(3) is produced below-

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) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour 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;

(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 misbehaviour; 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 (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 + [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-rule (3) to (27) of rule 8,

before making any order of imposing on the Government servant any such penalty.

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

- (i) a copy of the intimation to the Government servant of the proposal to take action against to him;*
- (ii) a copy of the statement or imputations of misconduct or misbehaviour delivered to him;*
- (iii) his representations, 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 misbehaviour; and*
- (vii) the orders on the case together with the reasons therefor.*

5. There is no dispute that no any preliminary enquiry was conducted. After issuing show cause notice, the respondents have imposed the punishment of stopping three years increments.

6. The learned counsel for the applicant has pointed out Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.5215/2005 in the case of **Anil Shahadrao Tribhuvan Vs. Chief Executive Officer, Zilla Parishad, Jalgaon decided on 18.11.2016**. Para nos. 4, 5 and 6 are reproduced below-

4. Upon considering the submissions canvassed by the learned counsel for respective parties, it is manifest that, departmental enquiry was never conducted, though in the show cause notice issued to the petitioner, it was stated that, if the explanation is not received from the petitioner, then departmental enquiry would be commenced and the documents

would be supplied to the petitioner. Without adhering to the said procedure directly punishment is imposed upon the petitioner. The departmental enquiry was initiated against other employees and in the said departmental enquiry on the basis of their statement, the notice was issued to the petitioner. It was expected that, the respondents would have abided by their own show cause notice in which they had proposed to conduct departmental enquiry. The petitioner was apprised that the departmental enquiry would be commenced. However, without conducting the departmental enquiry action is taken. It was required to be considered that, the petitioner was holding additional charge and was not holding full fledged charge of the post.

5. This Court at the time of admitting the writ petition had stayed the impugned penalty.

6. Considering the aforesaid conspectus of the matter, the impugned orders are quashed and set aside. Rule is made absolute in terms of prayer clause "B". No costs.

7. The applicant has not committed any serious misconduct. He has submitted to his Superior Officer about the vacancy of post. The applicant has mistakenly shown the vacant post at Tahsil office Buldana instead of District Supply Office at Buldana. It appears from the documents filed on record that the applicant has corrected information on the very same day i.e. on 24.01.2022 and the same was submitted by E-mail on 25.01.2022. The respondents have not considered correct information and wrongly held the applicant guilty for submission of wrong information. In view of Judgment of the

Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.5215/2005 in the case of **Anil Shahadrao Tribhuvan Vs. Chief Executive Officer, Zilla Parishad, Jalgaon decided on 18.11.2016.** opportunity should have been given to the applicant.

8. In fact, the respondents could have initiated enquiry against the applicant before passing the impugned order. Without any enquiry, applicant is punished. It is not legal as per the above cited Judgment. Hence, the following order is passed.

ORDER

1. The O.A. is allowed.
2. The impugned order dated 08.02.2022 and 23.03.2022 are hereby quashed and set aside.
4. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 02/09/2024.
rsm.

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

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman
Judgment signed on : 02/09/2024.
and pronounced on
