
(2016) 05 BOM CK 0078
In the Bombay High Court
Case No : Writ Petition No. 11790 of 2015

Parmeshwar s/o. Govind Gonare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Zilla Parishad, District Services (Discipline and Appeal) Rules, 1964 —
Rule 3 & 2(d)

Citation : (2016) 5 BCR 124

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. Suresh M. Kulkarni, Advocate, for the Petitioner in both Petitions; Mr. S.B. Yawalkar and S.K. Tambe, AGPs, for the Respondent-State; Mr. S.B. Talekar, Advocate, for the Respondent Nos. 2 and 3 in both Petition; Mr. O.B. Boinwad, Advocate, for the Res

Final Decision : Disposed Off

Judgement

S.S. Shinde, J.—Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. In these Petitions, the petitioners have prayed for quashment of order dated 30.11.2015 passed by respondent no.1 Deputy Secretary, Rural Development Department, ordering suspension of petitioners.

4. It is the case of the petitioner in Writ Petition No.12410/2015 that the petitioner is working in the Zilla Parishad, Nanded, as a Block Education Officer. The petitioner was directed by the Education Officer, Zilla Parishad, Nanded to enquire into the complaint against the office bearers of Shri Sant Shiromani Manmath Swami Shikshan Prasarak Mandal, Tehranagar, Nanded. Therefore, the petitioner was directed by the Education Officer [Primary] to cause enquiry into such complaint.

5. It is the case of the petitioner in Writ Petition No.11790/2015 that he is working in the Zilla Parishad Nanded w.e.f. 1999, presently he is promoted to the post of Extension Officer [Education]. Presently, he is attached to Panchayat Samiti, Nanded. It is his responsibility to visit schools which are receiving grant in aid through Zilla Parishad, further inspect the strength of the students, and the staff working therein. He required to see the annual reports of respective schools so as to know the educational standard of the school and the amenities provide to the students. This is with a view to see that students are properly taught and they are given requisite material. These duties are carried out by the Extension Officers under the orders of the Superior Officers i.e. respondent nos.2 to 4. It is further the case of the petitioner that Jijamata Primary School is being run by Tehra Nagar, Nanded, it receives 100% grant from the Education Officer, Zilla Parishad, Nanded. It was realised while undertaking the inspection of the school that there are illegalities in the school as such reports were periodically submitted by the petitioner to the Deputy Director, Nanded/Latur and to the Block Education Officer on 07.08.2013 and 18.02.2014 respectively. The petitioner has placed on record copy of report dated 18th February, 2014. It is further the case of the petitioner that the aforesaid report was considered by respondent nos.2 to 4 and Block Education Officer, respondent no.4 on 19.02.2014 had directed to file criminal complaints/First Information Report against the erring schools and its office bearers. Respondent no.3 has asked Shri Soni, who was working as Block Education Officer to file complaint, Shri Soni, vide his order dated 20.02.2014 has asked the petitioner to file a complaint. The copy of the said letter is placed on record by the petitioner.

6. It is further the case of the petitioner that pursuant to the instructions received from Shri Soni vide his order dated 20th February, 2014, the petitioner filed FIR No.10/2014 on 21st February, 2014 against the office bearers of Jijamata Primary School, Nanded. Said office bearers also runs various schools in the District of Nanded. The entire matter was investigated by the IPS Officer, Assistant Superintendent of Police, Nanded Shri Pankaj Deshmukh and he was pleased to file a charge sheet bearing No.56/2014 in the Court of Chief Judicial Magistrate First Class, Loha, District Nanded, for the offence punishable under Section 409, 420, 467, 468 etc. The petitioner has placed on record copy of the charge sheet.

7. It is further the case of the petitioner that there are serious allegations of cheating and looting the Government, therefore, even the Hon'ble Supreme Court declined to grant anticipatory bail and one of the officer bearers was required to surrender before the Police. The office bearers of Jijamata Primary School are political heavy weights. They started filing number of complaints against the petitioner and respondent nos.2 to 4. The petitioner is Class-III employee appointed by respondent no.1, and the complaints, if any, against him ought to have enquired at respondent no.1's level. However, political interference can be seen from the perusal of the contents of the impugned letter. In the said letter, there is reference to the order passed by the Hon'ble Minister,

and the complaint allegedly filed by the office bearer of Jijamata Primary School, Nanded. This letter is not received by either the petitioners and presently petitioner is discharging his duties as Extension Officer [Education] in respondent no.2.

8. It is the specific case of the petitioner that the petitioner filed a complaint against a officer bearer of Jijamata School, who has duped Government for more than Rs.2 crores and by using political influence, the petitioner who is Class-III employee, is being pressurised and harassed. Hence this Writ Petition.

9. The learned counsel appearing for the petitioner submits that the Maharashtra Zilla Parishad Discipline and Appeal Rules and other Acts provide remedies for taking penal actions against the staff of the Zilla Parishad. However, instead of resorting to these remedies Shri Dhonde who is a member of political party, presently in Ruling alliance with Government had filed a complaint on 16.09.2015 and other complaints in the past nudging the Hon?ble Minister of Rural Development to pass an order of suspension. He further submits that the impugned order has been passed by the Chief Executive Officer, upon receiving the direction by the Minister of Rural Development, Government of Maharashtra, Mantralaya, Mumbai. It is submitted that the order impugned in the Petition is outcome of political interference and is not by the Competent Authority keeping in view the relevant provisions, and not on the basis of own application of mind by respondent no.2. Therefore, he submits that, the suspension without ordering any fresh enquiry at the behest of Minister is bad in law and could be termed as politically motivated. The petitioner was never heard and there is no adherence to the principles of natural justice before the petitioner was placed under suspension. The entire approach of Zilla Parishad could be viewed as protecting interest of the office bearer of the school who deceived the Government to the tune of Rs.2 crores and 29 lacs. Therefore, the learned counsel appearing for the petitioner submits that, the Petition deserves to be allowed.

10. In pursuance of the notices to the respondents, respondent no.1 has filed affidavit-in-reply. It is submitted that the Deputy Secretary, Rural Development and Water Conversation Department, vide its letter dated 27th January, 2014, forwarded above said application and asked Divisional Commissioner, Aurangabad, to conduct an enquiry and submit report to the Government. The Divisional Commissioner, Aurangabad, appointed Assistant Commissioner [Inspection] for the said enquiry. Accordingly, enquiry was conducted and enquiry report to that effect was submitted to the Divisional Commissioner. The learned AGP submits that the petitioner who is working as Extension Officer [Education] has no authority to inspect the Babaraoji Kendriya SC Residential Primary and Secondary Ashram School, Shewadi [Ba], Taluka Loha, District Nanded. The petitioner has exceeded his jurisdiction. All matters related to said school should have been communicated to Social Welfare Department, which is competent to take action. The Officers have not followed the procedure before filing the complaints in the Police. The petitioner filed a complaint to Anti

Corruption Bureau against the office bearer and employee of the school. It is submitted that during enquiry it is revealed that the petitioner has exceeded his jurisdiction, and therefore, the State Government has rightly directed to the Chief Executive Officer, Zilla Parishad, Nanded and the State Authority has rightly placed the petitioner under suspension.

11. The learned counsel appearing for respondent nos. 2 and 3 made following submissions:

12. The scope of judicial review/interference with suspension order is quite limited. The suspension order as it is within the exclusive domain of Competent Authority who is empowered to review and revoke an order of suspension if satisfied that continuance of suspension is no longer required. Admittedly, the petitioner herein, namely Shri Parmeshwar Govind Gonare is placed under suspension on the basis of report of preliminary enquiry conducted by the Assistant Commissioner [Inspection], Divisional Commissioner Office, Aurangabad. The Assistant Commissioner [Inspection], Divisional Commissioner Office, Aurangabad had conducted a detailed enquiry and submitted a report through Divisional Commissioner to the Deputy Secretary to Government Rural Development and Water Conservation Department, Maharashtra State, Mumbai, vide Divisional Commissioner Office letter dated 21.05.2014. The report of preliminary enquiry conducted by the Assistant Commissioner [Inspection], Divisional Commissioner office, Aurangabad reveals that the petitioner Shri Gonare, who was working as Extension Officer [Education] in Panchayat Samiti Nanded, had no authority to inspect certain schools such as Babaraoji Dhonde Kendriya SC Residential Primary and Secondary Ashram School, Shewadi [Bazaar], Loha, Nanded and Jijamata Primary School, Tehra Nagar, Nanded.

13. Babaraoji Dhonde Kendriya SC Residential Primary and Secondary Ashram School, Shewadi [Bazaar], Loha, Nanded was not under the control of the Education Department or for that matter Rural Development and Water Conservation Department. The Babaraoji Dhonde Kendriya SC Residential Primary and Secondary Ashram School, Shewadi [Bazaar], Loha, Nanded was in fact under the control of Social Justice and Special Assistance Department. Similarly, the Jijamata Primary School, Tehra Nagar, Nanded was run outside the jurisdiction of Shri Gonare. Shri Gonare was working as an Extension Officer [Education] of Balirampur, CIDCO, Nanded beat whereas the Jijamata Primary School was outside the Balirampur, CIDCO, Nanded beat. The Jijamata Primary School, Tehra Nagar, Nanded was under the control of the Extension Officer [Education] incharge of beat No.2. Shri Kishan Fole was the Extension Officer [Education] for beat No. 2, Nanded within whose jurisdiction the Jijamata Primary School, Tehra Nagar, Nanded is located. As such Shri Kishan Fole was the Controlling Authority competent to inspect the Jijamata Primary School, Tehra Nagar, Nanded. The petitioner, Shri Gonare was working as an Extension Officer [Education] of Balirampur, CIDCO, Nanded beat, and thus had no authority to inspect (i) Babaraoji Dhonde Kendriya SC Residential Primary and Secondary

Ashram School, Shewadi [Bazaar], Loha, Nanded, and (ii) Jijamata Primary School, Tehra Nagar, Nanded. The petitioner, Shri Gonare exceeded his jurisdiction so as to inspect the schools which were not falling under his jurisdiction, prepared false reports and submitted reports of inspection to the Block Inspection Officer, Shri K.P.Sone. Both Gonare and Shri Sone were acting in collusion so as to file complaint to the Block Education Officer against office bearers and employees of schools which did not fall within their jurisdiction. Moreover, such inspection and complaints was done without prior approval of the competent authority i.e. the Chief Executive Officer, Zilla Parishad, Nanded. The Government of Maharashtra, more particularly in Rural Development and Water Conservation Department had received several complaints against Shri Gonare and Shri Sone that they were blackmailing several school authorities and filing false cases of atrocities against the superiors and many others, at times at the behest of politicians. The Government of Maharashtra, more particularly in Rural Development and Water Conservation Department had, therefore, directed enquiry through the Assistant Commissioner [Inspection], Divisional Commissioner office, Aurangabad.

14. The findings recorded in the report of enquiry, more particularly, the conclusions in paragraph no. 2, 3 and 4 disclosed that this was the modus operandi used by Shri Gonare and Shri Sone to file false complaints against school authorities and superiors so as to extort money. The report of enquiry conducted by the Assistant Commissioner [Inspection], Divisional Commissioner Office, Aurangabad, finds place at pages 39 to 45 of the Petition. The Headmaster, Jijamata Primary School, Tehra Nagar, Nanded had filed a complaint against Shri. Gonare, who was then working as an Extension Officer [Education] of Nanded Beat No.2 on 22.12.2012. As a result, Shri Gonare came to be transferred from Beat No.2 to Balirampur, CIDCO, Nanded on the basis of enquiry conducted by Shri K.P.Sone, vide order dated 20.02.2013, which is placed on record at page 220 of the Petition. Shri Gonare threatened the Headmaster, Jijamata Primary School, Tehra Nagar, Nanded on 05.12.2013. Shri Gonare filed a complaint on 21.02.2014 against the office bearers of Jijamata Primary School, Tehra Nagar, Nanded and Babaraoji Dhonde Kendriya SC Residential Primary and Secondary Ashram School, Shewadi [Bazaar], Loha, Nanded, that is long after his transfer to Balirampur Beat, CIDCO, Nanded.

15. The Block Education Officer [Panchayat Samiti] Nanded, Shri Sone directed Shri Gonare, who was working as Extension Officer in Panchayat Samiti Nanded to lodge a complaint against the office bearers of the trust namely Sant Shiromani Manmad Swami Shikshan Prasarak Mandal, Kewdi [Bazaar], Taluka Loha, Nanded. Neither the Block Education Officer [Panchayat Samiti] Nanded Shri Sone had the power to authorise the Extension Officer in Panchayat Samiti Balirampur beat Nanded to file complaints, nor did Shri Gonare, the Extension Officer in Panchayat Samiti, Balirampur Beat Nanded by himself have authority to lodge complaints at Sonkhed Panchayat Samiti regarding schools outside his jurisdiction of Panchayat Samiti, Nanded. The State of Maharashtra has filed an

affidavit at Page 200-205 along with annexures. The report of enquiry conducted by Enquiry Officer and Assistant Commissioner [Inspection], Divisional Commissioner Office, Aurangabad, although was submitted on 08.05.2014, the same was not acted upon due to resistance offered by Shri Gonare, the Extension Officer in Panchayat Samiti, Nanded and Block Education Officer [Panchayat Samiti], Nanded Shri Sone.

16. The Deputy Secretary to Government in Rural Development and Water Conservation Department directed to suspend both Shri Gonare Extension Officer in Panchayat Samiti, Nanded as well as Shri K.P.Sone, Block Education Officer [Panchayat Samiti], Nanded immediately and initiated departmental enquiry against them vide order dated 19.01.2015 and letter dated 30.09.2015, which has been annexed at Page 46 of the paper book. However, since nothing was done on the basis of directions issued by the Deputy Secretary, the Hon?ble Minister for Rural Development and Water Conservation Department was constrained to reiterate the directions issued by the Deputy Secretary and call for a compliance report till 05.12.2015. Both Shri Gonare, Extension Officer [Education] in Panchayat Samiti, Nanded as well as Shri K.P.Sone, Block Education Officer, Panchayat Samiti, Nanded became aware about the directions issued by the State of Maharashtra on 30.11.2015. Meanwhile, the Director of Education, Maharashtra State, Pune directed to place Shri K.P.Sone under suspension vide order dated 16.12.2015. Similarly, the Chief Executive Officer, Zilla Parishad, Nanded placed Shri Gonare, Extension Officer in Panchayat Samiti, Nanded under suspension pending departmental enquiry vide order dated 03.12.2015.

17. The Government has rightly directed the suspension and holding of departmental enquiry against both Shri Gonare, Extension Officer in Panchayat Samiti, Nanded as well as Shri K.P.Sone, Block Education Officer, Panchayat Samiti, Nanded, vide order dated 20.11.2015. The power of suspension can be exercised in the following contingencies: (a) when departmental enquiry is initiated and/or pending, (b) when departmental enquiry is contemplated, and (c) when criminal proceeding is pending. No fault can be found with the suspension of either Shri Gonare, Extension Officer [Education] in Panchayat Samiti, Nanded or Shri K.P.Sone, Block Education Officer, Panchayat Samiti, Nanded since the same was based on the preliminary enquiry conducted by the Assistant Commissioner [Inspection], Divisional Commissioner office, Aurangabad. Enquiry was directed against both Shri Gonare, Extension Officer in Panchayat Samiti, Nanded as well as Shri K.P.Sone Block Education Officer [Panchayat Samiti], Nanded in the past, however, the Enquiry Officers could not hold departmental enquiries because of the hostile attitude adopted by them. Meanwhile, the Panchayat Samiti had decided to send Shri K.P.Sone on compulsory leave so as to enable holding of departmental enquiry against him in its meeting held on 19.09.2015.

18. Babaraoji Dhonde Kendriya SC Residential Primary and Secondary Ashram

School, Shewadi [Bazaar], Loha, Nanded run under the scheme of the Central Government. Moreover, the said Ashram School i.e. Babaraoji Dhonde Kendriya SC Residential Primary and Secondary Ashram School, Shewadi [Bazaar], Loha, Nanded does not fall within the jurisdiction of either school Education Department or Rural Development and Water Conservation Department. Accordingly, Shri Sandeep kumar Sureshrao Sontakke filed affidavit-in-reply on 09.12.2015. There was no occasion for Shri Sone to file additional affidavit in the aforesaid petition that too through a private advocate i.e. an advocate who is not on the panel of advocates of Zilla Parishad. Shri Sone had filed affidavit to lend support to the contentions of Shri Gonare filed in his petition. Shri Sone did not obtain prior permission of the Chief Executive Officer, Zilla Parishad, Nanded before filing an additional affidavit, particularly when he had complete knowledge that the Government had directed to place him under suspension way back on 30.11.2015. As a matter of fact, Shri K.P. Sone was placed under suspension on 16.12.2015. Shri K.P.Sone had no authority to file an additional affidavit-in-reply especially without prior approval of the Chief Executive Officer, Zilla Parishad, Nanded. Secondly, Shri K.P.Sone could not have filed an additional affidavit-in-reply especially when he was already placed under suspension. Thirdly, he had no authority to engage a private advocate i.e. advocate who is not on the panel of advocates of Zilla Parishad, Nanded, and lastly, Shri K.P. Sone could not have justified the illegal action of Shri Gonale.

19. It is clear that Shri K.P.Sone has filed an additional affidavit-in-reply only with a view to creating confusion and thereby prejudicing this Court. The Chief Executive Officer, Zilla Parishad, Nanded was, therefore, required to issue a show cause notice to Block Education Officer, Shri K.P.Sone, [under suspension] on 17.12.2015 for having filed an additional affidavit-in-reply without seeking his permission, the same is annexed at page 221 of the paper book. The Government of Maharashtra after examining the report of preliminary enquiry conducted by the Assistant Commissioner [Inspection], Divisional Commissioner office, Aurangabad, had found a prima facie case for initiating a Departmental Enquiry against both and at the same time to place them under suspension. Accordingly, the Deputy Secretary to Government Rural Development and Water Conservation Department directed the Chief Executive Officer, Zilla Parishad, Nanded to initiate departmental enquiry and place both Shri K.P.Sone and Shri Gonare under suspension vide order dated 30.11.2015. No fault can be found with the enquiry conducted by the Assistant Commissioner [Inspection], Divisional Commissioner office, Aurangabad. The State of Maharashtra, the Chief Executive Officer, Zilla Parishad, Nanded, the Education Officer [Primary], Zilla Parishad, Nanded and the Block Education Officer Panchayat Samiti, Nanded, have fully supported the impugned order of suspension. There is no need to interfere in the impugned order of suspension. There is no substance in the petition and it is liable to be dismissed, therefore, the same be dismissed with costs.

20. We have considered the submissions of the learned counsel appearing for the

respective parties. With their able assistance, perused the pleadings in the Petition, annexures thereto, replies filed by the respondents, and the written notes of argument tendered across the bar by the learned counsel appearing for the petitioners and the learned counsel appearing for respondent nos. 2 and 3. At the outset it would be apt to reproduce herein below the letter written by the Deputy Secretary, Rural Development and Water Conservation Department, Government of Maharashtra, dated 30th November, 2015 to the Chief Executive Officer, Zilla Parishad, Nanded:

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The true translation of the letter dated 30.11.2015 done by the office translator reads thus:

GOVERNMENT OF MAHARASHTRA

No.DEN2813/C.No.238/Estt.12 Rural Development and Water Conservation Department, Bandhkam Bhavan 25 Marzban Path, Fort, Mantralaya, Mumbai 400 001.

Dated : 30th November, 2015.

To,

The Chief Executive Officer, Zilla Parishad, Nanded.

Sub :Complaint application regarding initiation of Departmental Enquiry. Prof. Manohar Dhonde.

Ref :Govt's even letter Nos. dated 19/01/2015 and dated 30/09/2015.

With reference to the above subject and letter under reference and report received from the office of the Divisional Commissioner, Aurangabad in respect of the illegal deeds of Shri. Gonare, Education Extension Officer and Shri. Sone Block Education Officer, Nanded have been noticed. Therefore, necessary directions to initiate immediate enquiry against them as well as initiation of disciplinary action against the employee/officer for causing delay in the matter have been given. As per Govt. letter dated 30.09.2015 necessary directions were given to submit report in this behalf. However, said report is yet to be received by the government.

In this regard, as per the order of Honourable Minister (Rural Development) you are hereby informed that Shri. Gonare, Education Extension Officer and Shri. Sone, Block Education Officer, Nanded should be suspended immediately and disciplinary action shall be initiated against them. Similarly a report in this behalf should be submitted so that it will be received by the Government before 05/12/2015.

Sd/

(P.S. Kamble)

Deputy Secretary to the Govt. Copy Forwarded to the Divisional Commissioner, Aurangabad for information and necessary action.

From the above-mention letter addressed by the Deputy Secretary, Rural Development and Water Conservation Department, Government of Maharashtra to the Chief Executive Officer, Zilla Parishad, Nanded, it is abundantly clear that the directions are given to the Chief Executive Officer on the instructions of the Hon?ble Minister [Rural Development], Government of Maharashtra that Shri Gonare Education Extension Officer and Shri Sone Block Education Officer, Nanded should be placed under suspension and disciplinary proceedings should

be initiated against them and to that effect report should be submitted to the Government by 5th December, 2015. Rule 3 of the Maharashtra Zilla Parishads District Services [Discipline and Appeal] Rules, 1964, [for short 'the Rules, 1964'], reads thus:

3. Suspension.

The Appointing Authority or any other Officer of the Zilla Parishad to whom such Appointing Authority is subordinate or any other officer of the Zilla Parishad empowered by the Chief Executive Officer in that behalf may place a Parishad servant under suspension, (a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) where a case against him in respect of any criminal offence is under investigation or trial:

provide that, where the order of suspension are made by an authority lower in rank than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

(2)

(3)

(4)

(5) An order of suspension made or deemed to have been made under this rule may, at any time, be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

21. Neither the Minister is an Appointing Authority, nor he is superior Officer working in the concerned Zilla Parishad, who is superior to the Appointing Authority of Shri Gonare and Shri Sone. Rule 2 (d) of the said Rules, 1964, which defines 'Appointing Authority', reads thus:

(d) "Appointing Authority" in relation to a Parishad servant means

(i) the authority empowered to make appointment to a post or cadre in the District Service of which the Parishad servant is for the time being a member or to any grade of the District Service in which the Parishad servant is for the time being included, or

(ii) The authority which appointed the Parishad servant to such service grade or post, as the case may be, or

(iii) Where the Parishad servant having been a permanent member of any other District Service or having substantively held any other permanent post under a District service has been in continuous employment of the Zilla Parishad the authority which appointed him to that District Service or to any grade, in that District or to that post.

Whichever authority is the highest authority;

22. Upon perusal of the definition of the Appointing Authority in the said Rules, it is abundantly clear that the Minister, Rural Development, is not an Appointing Authority of the aforesaid two employees. He is not an Officer of Zilla Parishad to whom appointing authority of the aforementioned employees is subordinate to the said Minister.

23. In that view of the matter, in our considered opinion, the directions contained in the letter are contrary to the said Rules, 1964. Therefore, the communication contained in the impugned order dated 30.11.2015 deserves to be quashed and set aside, and the same is accordingly quashed and set side.

24. Rule made absolute on the above terms. The Petition stands disposed of accordingly. No costs.