

(2016) 12 BOM CK 0087
In the Bombay High Court
Case No : Writ Petition No. 11361 of 2016

Sunita Chandrakant Kalekar

APPELLANT

Vs

The Zilla Parishad, Kolhapur

RESPONDENT

Date of Decision : 08-12-2016

Acts Referred:

Maharashtra Zilla Parishad, District Services (Discipline and Appeal) Rules, 1964 — Rule 3

Citation : (2017) 1 ALLMR 559 : (2017) 1 MhLJ 629

Hon'ble Judges : Shantanu Kemkar and Prakash Naik, JJ.

Bench : Division Bench

Advocate : Mr. Suresh Pakale a/w. Mr. Prashant Bhavake, Advocates, for the Petitioner; Mr. R.D. Rane, Advocate, for the Respondent Nos. 1 to 5

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—The Petitioner is working on the post of "Assistant Teacher" in the Primary School run by Zilla Parishad, Kolhapur. A notice dated 28th June, 2016 (Exhibit G) was issued to her alleging therein that she had acted in violation of Rule 3 and 19 of Maharashtra Zilla Parishad District Services (Conduct) Rules, 1967 (for short "Rules of 1967") asking her to show cause as to why she be not suspended and departmental inquiry be not initiated against her.

2. The Petitioner submitted a reply to the said show cause notice on 2nd July, 2016 (Exhibit H). After considering the reply, the Respondent ? Zilla Parishad passed an order dated 30th August, 2016 (Exhibit I) by which the Petitioner has been put to suspension. Feeling aggrieved by the order of her suspension the Petitioner has filed this Petition.

3. The case of the Petitioner is that while passing the impugned suspension order, there is gross violation of the Rule 3 of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 (for short "Rules of 1964"). It is stated that in the impugned order there is no mention that disciplinary proceeding is contemplated and is pending against the Petitioner and therefore

the impugned order is liable to be quashed. It is further stated that the allegations levelled in the show cause notice and the impugned suspension order are false and fabricated and are made only to harass the Petitioner on account of political pressure of local politicians at the instance of one Mr. Devekar.

4. On the other hand, Respondent ? Zilla Parishad has supported the impugned order. It has been stated that the action of suspension which has been taken against the Petitioner is in conformity of Rule 3 of Rules 1964. According to the Respondents a close reading of the notice as also the suspension order would clearly indicate that for the various allegations mentioned therein, a departmental inquiry against the Petitioner was in contemplation. It is also stated that recently in November, 2016, charge-sheet has also been issued against the petitioner.

5. We have heard learned counsel for the parties and perused the record.

6. The controversy in the matter revolves around Rule 3 of the Rules of 1964 which deals with the powers of suspension. It reads as under :

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 : Provided that, where the orders 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) A Parishad servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of detention, by an order of the Appointing Authority and shall remain under suspension until further orders.

(3) Whether a penalty of dismissal, removal or compulsory retirement from service imposed upon a Parishad servant under suspension is set aside in appeal or revision under these rules, and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Parishad servant is set aside or declared or rendered void in consequence of, or by, decision of a Court of law and the Disciplinary Authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal

or compulsory retirement was originally imposed, the Parishad servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(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.

7. In the present case the impugned order of suspension has been passed invoking the powers under Section 3(a) of the Rules of 1964 which makes it clear that suspension can be made where disciplinary proceeding against the servant is either contemplated or is pending.

8. The case of the Petitioner is that in the impugned order, there is no mention that Zilla Parishad has contemplated disciplinary proceeding against the Petitioner and therefore, the order of suspension is unsustainable.

9. In order to appreciate these contention, it would be appropriate to refer the relevant portion of impugned suspension order. In the said order, we find that serious allegations were levelled against the Petitioner. There is also reference of show cause notice dated 28th June, 2016 in which there was clear mention that, if the reply is not found satisfactory, a disciplinary inquiry will be initiated against the Petitioner and the Petitioner will be suspended. In the suspension order a further reference has been made that the Petitioner's alleged conduct as mentioned in the suspension order is contrary to Rule 3 of the Rules of 1967 which is regarding the "Duty of Parishad servants to maintain integrity". It provides that "every Parishad servant have at all time maintain absolute integrity and devotion to duty". The order further mentions that the Petitioner's conduct is in violation of Rule 19 of the Rules of 1967 which provides that "No Parishad servant shall, except with the previous sanction of the Chief Executive Officer have recourse to any Court or to the press for the vindication of any official act which has been the subject matter of adverse criticism or an attack or defamatory character".

10. In view of the reasons as mentioned in the suspension order, the contention of the Petitioner that the inquiry was not in contemplation, cannot be accepted. Merely because in the impugned order of suspension it is not mentioned that inquiry is in contemplation will not vitiate the impugned order, as the order of suspension is to be seen as a whole in the totality of the background facts. On reading of the order, as described above, it can be easily gathered that when the Petitioner was ordered to be suspended the disciplinary proceeding against her was in contemplation.

11. It is further to be noted that after issuance of impugned suspension order, the Petitioner has now already been issued a charge sheet in November, 2016.

12. Having regard to the aforesaid, we are of the view that the contention of the

Petitioner that the impugned order is violative of Rule 3(a) of the Rules of 1964 cannot be accepted. Thus, we find no merit in this Petition. The Petition fails and is hereby dismissed.