



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 8421/2018

Rajesh Sukhadeorao Rakhonde,
Age – 43 years, Occ-Service,
R/o At Gourkheda, Tq. Bhatkuli,
Dist. Amravati.

PETITIONER

....VERSUS.....

1. Divisional Commissioner
Amravati Division, Amravati,
Tq. and Dist. Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer, Camp,
Amravati, Tq. and Dist. Amravati.
3. Education Officer (Primary),
Zilla Parishad, Amravati,
Tq. and Dist. Amravati.
4. Block Education Officer,
Panchayat-Samiti Bhatkuli,
Tq. Bhatkuli and Dist. Amravati.

RESPONDENTS

WITH

WRIT PETITION NO. 8434/2018

Mahavir Devidas Wankhede,
Age – 50 years, Occ. Service,
R/o Pahur, Tq. Nandgaon-kh,
Dist. Amravati.

PETITIONER

....VERSUS.....

1. Divisional Commissioner
Amravati Division, Camp Amravati,
Tq. and Dist. Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer, Camp,
Amravati, Tq. and Dist. Amravati.
3. Education Officer (Primary),
Zilla Parishad, Amravati,
Tq. And Dist. Amravati.
4. Block Education Officer,
Panchayat Samiti, Nandgaon-Kh,
Tq. Nandgaon-Kh, Dist. Amravati.

RESPONDENTS

WITH
WRIT PETITION NO. 8435/2018

Sanjay Deoraoji Petale,
Age – 45 years, Occ-Service,
R/o Dhanraj Nagar, Chandur-Rly,
Tq. Chandur-Rly, Dist. Amravati.

PETITIONER

.....VERSUS.....

1. Divisional Commissioner,
Amravati Division, Camp Amravati,
Tq. and Dist. Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer, Camp,
Amravati, Tq. and Dist. Amravati.
3. Education Officer (Primary)
Zilla Parishad, Amravati,
Tq. And Dist. Amravati.
4. Block Education Officer,
Panchayat Samiti, Chandur-Rly,
Tq. Chandur-Rly, Dist. Amravati.

RESPONDENTS

WITH
WRIT PETITION NO. 8436/2018

Anil Manikrao Deshmukh,
Age – 52 years, Occ-Service,
R/o Sawanga-Asara Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

1. Divisional Commissioner,
Amravati Division, Camp Amravati,
Tq. and Dist. Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer, Camp,
Amravati, Tq. and Dist. Amravati.
3. Education Officer (Primary),
Zilla Parishad, Amravati,
Tq. And Dist. Amravati.
4. Block Education Officer,
Panchayat Samiti, Amravati Tq. and
Dist. Amravati.

RESPONDENTS

WITH
WRIT PETITION NO. 8438/2018

Vijay Kisanrao Deshmukh,
Age – 49 years, Occ-Service,
R/o Adgaon-Bk, Tq. Nandgaon-Kh,
Dist. Amravati.

PETITIONER

....VERSUS.....

1. Divisional Commissioner,
Amravati Division, Amravati,
Tq. and Dist. Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer, Camp,
Amravati, Tq. and Dist. Amravati.
3. Education Officer (Primary),
Zilla Parishad, Amravati,
Tq. And Dist. Amravati.
4. Block Education Officer,
Panchayat Samiti Nandgaon-Kh,
Tq. Nandgaon-Kh, Dist. Amravati.

RESPONDENTS

WITH
WRIT PETITION NO. 8480/2018

Anil Sukhadeorao Mahulkar,
Aged: 55 years, Occ-Service,
R/o Nandura-Bk, Tq. and Dist. Amravati.

PETITIONER

....VERSUS.....

1. Divisional Commissioner,
Amravati Division, Amravati,
Tq. and Dist. Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer,
Camp, Amravati, Tq. and Dist. Amravati.
3. Education Officer (Primary),
Zilla Parishad, Amravati,
Tq. and Dist. Amravati.
4. Block Education Officer,
Panchayat-Samiti Bhatkuli,
Tq. Bhatkuli and Dist. Amravati.

RESPONDENTS

WITH
WRIT PETITION NO. 8507/2018

Priti Rajendra Kadu,
Aged: 32 years, Occ-Service,
R/o Manjari-Mhasala,
Tq. Nandgaon-kh, Dist.Amravati.

PETITIONER

....VERSUS.....

1. Divisional Commissioner,
Amravati Division, Amravati,
Tq. and Dist. Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer,
Camp, Amravati, Tq. and Dist. Amravati.
3. Education Officer (Primary),
Zilla Parishad, Amravati,
Tq. and Dist. Amravati.
4. Block Education Officer,
Panchayat-Samiti Nandgaon-Kh,
Tq. Nandgaon-Kh, Dist. Amravati.

RESPONDENTS

WITH
WRIT PETITION NO. 8526/2018

Vasant Mahadeorao Lohekar,
Age- 47 years, Occ-Service,
R/o At Takharkheda (Sambhu),
Tq. Bhatkuli, Dist. Amravati.

PETITIONER

....VERSUS.....

1. Divisional Commissioner,
Amravati Division, Amravati,
Tq. and Dist. Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer,
Camp, Amravati, Tq. and Dist. Amravati.
3. Education Officer (Primary),
Zilla Parishad, Amravati,
Tq. and Dist. Amravati.
4. Block Education Officer,
Panchayat-Samiti Bhatkuli,
Tq. Bhatkuli, Dist.Amravati.

RESPONDENTS

WITH
WRIT PETITION NO. 8529/2018

Kishor Shivcharanji Ganvir,
Age- 40 years, Occ-Service,
R/o At Salora Kh, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

1. Divisional Commissioner,
Amravati Division, Camp Amravati,
Tq. and Dist. Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer,
Camp, Amravati, Tq. and Dist. Amravati,
3. Education Officer (Primary),
Zilla Parishad, Amravati,
Tq. and Dist. Amravati.
4. Block Education Officer,
Panchayat-Samiti Amravati,
Tq. and Dist. Amravati.

RESPONDENTS

WITH
WRIT PETITION NO. 8530/2018

Jaya d/o Narayanrao Gopnarayan,
Age- 40 years, Occ-Service,
R/o Nimbhari, Tq. Anjangaon-Surji,
Dist. Amravati.

PETITIONER

.....VERSUS.....

1. Divisional Commissioner,
Amravati Division, Camp Amravati,
Tq. and Dist. Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer,
Camp, Amravati, Tq. and Dist. Amravati.
3. Education Officer (Primary),
Zilla Parishad, Amravati,
Tq. and Dist. Amravati.
4. Block Education Officer,
Panchayat-Samiti Anjangaon-Surji,
Tq. Anjangaon-Surji, Dist. Amravati.

RESPONDENTS

WITH
WRIT PETITION NO. 8531/2018

Pramod Samadhan Bhagat,
Age- 47 years, Occ-Service,
R/o Samda, Tq. Daryapur, Dist. Amravati.

PETITIONER

.....VERSUS.....

1. Divisional Commissioner,
Amravati Division, Amravati,
Tq. and Dist. Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer,
Camp, Amravati, Tq. and Dist. Amravati.
3. Education Officer (Primary),
Zilla Parishad, Amravati,
Tq. and Dist. Amravati.
4. Block Education Officer,
Panchayat-Samiti Daryapur,
Tq. Daryapur, Dist. Amravati.

RESPONDENTS

Shri P.S. Patil, counsel for petitioner.
Shri S.B. Bissa, Assistant Government Pleader for respondent no.1.
Shri M.G. Rathi, counsel for respondent nos.2 to 4.

WITH
WRIT PETITION NO. 8713/2018

Sushama W/o Keshavrao Pote,
Age- 47 years, Occu: Service,
R/o Plot No.4, Anjansingi Road,
In front of Adarsha College Navin
Padne Nagar, Juna Dhamangaon,
Amravati, Dist. Amravati.

PETITIONER

.....VERSUS.....

1. The Divisional Commissioner,
Amravati Division, Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer,
District- Amravati.
3. Education Officer (Primary),
Zilla Parishad, Amravati,
Dist. Amravati.

RESPONDENTS

WITH
WRIT PETITION NO. 8474/2018

Baburao S/o Shankarrao Thakare,
Aged: 54 years, Occu. Service,
R/o Mahesh Colony, Morshi, Tah.
Morshi, Dist. Amravati.

PETITIONER

....VERSUS.....

1. The Divisional Commissioner,
Amravati Division, Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer,
District - Amravati.
3. Education Officer (Primary),
Zilla Parishad, Amravati, Dist. Amravati.

RESPONDENTS

WITH
WRIT PETITION NO. 8475/2018

Maheshkumar Bhauraoji Dalvi,
Aged: 49 years, Occu. Service,
R/o Near Sangekar Hall, Chandur Bazar,
Tah. Chandur Bazar, Distt. Amravati.

PETITIONER

....VERSUS.....

1. The Divisional Commissioner,
Amravati Division, Amravati.
2. Zilla Parishad Amravati,
through its Chief Executive Officer,
District - Amravati.
3. Education Officer (Primary),
Zilla Parishad, Amravati,
Dist. Amravati.

RESPONDENTS

Shri R.D. Karode, counsel for petitioner.
Shri S.B. Bissa, Assistant Government Pleader for respondent no.1.
Shri M.G. Rathi, counsel for respondent nos.2 and 3.

WITH

WRIT PETITION NO. 8586/2018

Asma Parveen Naeemoddin,
Age: 31, Occ: Assistant Teacher,
Zilla Parishad Urdu Primary School,
Kandli, Tq. Achalpur, Dist. Amravati.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. Divisional Commissioner
Amravati Division, Amravati.
3. Zilla Parishad Amravati,
through its Chief Executive Officer.
4. Chief Executive Officer,
Zilla Parishad, Amravati.
5. Education Officer (Primary),
Zilla Parishad, Amravati,
Dist. Amravati.
6. Block Education Officer,
Panchayat Samiti, Achalpur,
Dist. Amravati.

RESPONDENTS

Shri R.J. Mirza, counsel for petitioner.
Shri S.B. Bissa, Assistant Government Pleader for respondent nos.1 and 2.
Shri M.G. Rathi, counsel for respondent no.3 to 5.

CORAM : A.S. CHANDURKAR, J.

DATE : 09TH JULY, 2019.

ORAL JUDGMENT

Since these writ petitions raise identical challenges, they are being decided together by this common judgment.

2. **RULE.** Rule made returnable forthwith. Heard finally with consent of counsel for the parties.

3. The petitioners are aggrieved by the order passed by the Divisional Commissioner in appeals preferred under Rule 14 of the Maharashtra Zilla Parishads (Discipline and Appeal) Rules, 1964 (for short, 'Discipline and Appeal Rules') whereby the Divisional Commissioner while partly allowing the appeals preferred by the petitioners has been pleased to substitute the penalty of withholding of one increment with permanent effect with the penalty of withholding one increment for a period of one year which would not affect further increments.

4. It is the case of each petitioner in the respective writ petitions that pursuant to the policy decision dated 27.03.2017 in the matter of posting of husband and wife together in case they were serving at a distance of more than thirty kilometers at different places, the petitioners had submitted relevant information and had given various options to enable each of them to be posted alongwith their spouse. After following the prescribed procedure, transfer orders came to be issued in May-2018. It was noticed by the Zilla Parishad that incorrect information had been furnished by some of the petitioners while in the case of other petitioners, the minimum requirement of the distance exceeding thirty kilometers had not been specified. On that basis, the Chief Executive Officer passed an order holding that since the petitioners were beneficiaries of the orders of transfer that were issued based on improper documents, it was clear that

there was breach of Rule 3 of the Maharashtra Zilla Parishad District Services (Conduct) Rules, 1967. Accordingly, as per Circular dated 28.06.2018 one increment was withheld with permanent effect. The petitioners being aggrieved by that order preferred appeals under Rule 14 of the Discipline and Appeal Rules. The Commissioner noticed that no enquiry was held before imposing a major penalty of withholding increments permanently. The Commissioner therefore reduced the punishment as imposed and directed imposition of a lesser punishment of withholding one increment for a period of one year which would not affect further increments. Being aggrieved by this order, the petitioners have challenged the same.

5. The learned counsel for the petitioners while assailing the impugned order submitted that the entire action taken by the Zilla Parishad is without following the due process of law. Though it was rightly found by the Commissioner that the punishment of withholding increments permanently was a major penalty, the punishment as substituted was also without following the procedure prescribed. In that regard, reference was made to the provisions of Rules 6 and 7 of the Discipline and Appeal Rules. It was submitted that even for the purposes of imposing a minor penalty, the Zilla Parishad servant is required to be informed about the same and he has to be given an opportunity to make

representation in that regard. The said procedure not having been followed, no punishment was liable to be imposed upon the petitioners. It was further submitted that with regard to employees of other Zilla Parishads who were similarly situated, the concerned Commissioner had set aside the order imposing penalty after finding that such penalty had been imposed without following the due procedure. It was thus submitted that the impugned order was liable to be set aside. Reliance was also placed on the decision in *Somesh Tiwari Versus Union of India & Others* [AIR 2009 SC 1399] to submit that even a subsequent order of transfer passed in lieu of punishment was liable to be set aside.

6. Shri M.G. Rathi, learned counsel for the Zilla Parishad and Shri S.B. Bissa, learned Assistant Government Pleader for the respondent no.1 supported the impugned action. Shri M.G. Rathi, learned counsel submitted that as it was found that the petitioners had furnished incorrect/incomplete/false information, it was necessary for the Zilla Parishad to have initiated an action against them. After calling for their explanations, the Chief Executive Officer had found that there was substance in the allegations made against the petitioners and hence the punishment came to be imposed. The cases of the petitioners were also examined by the Commissioner and since it was found that the petitioners were at fault a minor penalty had been imposed. The learned counsel

referred to the affidavit filed on behalf of the respondent nos.2 and 3 in that regard.

7. I have heard the learned counsel for the parties and I have perused the documents placed on record. Since the petitioners are aggrieved by the order passed by the Commissioner imposing the penalty of withholding an increment temporarily for a period of one year which is a minor penalty, it would be necessary to examine whether the procedure for imposing a minor penalty has been followed. Rule 4 of the Discipline and Appeal Rules prescribes the nature of penalty that can be imposed on a Zilla Parishad servant. One of the penalties is withholding of increments or promotion. Rule 6 prescribes the procedure for imposing major penalties while Rule 7 prescribes the procedure for imposing minor penalties. The order withholding increments for a period of one year even if assumed to be a minor penalty, it was necessary for the Zilla Parishad to have followed the procedure prescribed by Rule 7 of the Discipline and Appeal Rules. The said rule contemplates informing the Parishad servant in writing of the proposal to take action against him with an opportunity to make a representation in that regard. The record of proceedings should include copy of the intimation to the Parishad servant of the proposal to take action, copy of statement of allegations communicated

to him, his representation if any and the orders passed thereon. It is not in dispute that this procedure contemplated by Rule 7 has not been followed by the Zilla Parishad. This is notwithstanding the fact that the Chief Executive Officer had initially imposed penalty of withholding one increment with permanent effect. It is to be noted that in *Prabhakar Mallikarjun Suryawanshi & Others Versus State of Maharashtra & Others* [2018(3) Mh.L.J. 503], it has been held by the Division Bench that withholding of one increment permanently would be major penalty while withholding one increment for a period of one year would amount to a minor penalty. In any event, the procedure prescribed either by Rule 6 or Rule 7 of the Discipline and Appeal Rules has not been shown to have been followed. On this count therefore the impugned orders cannot be sustained.

8. For the reasons aforesaid, the following order is passed:-

The order passed by the Chief Executive Officer, Zilla Parishad, Amravati dated 18.07.2018 as well as the order passed by the Divisional Commissioner in the appeal preferred by the petitioners is set aside. The Chief Executive Officer is at liberty to take action against the petitioner in the facts of the respective case in accordance with law. The points raised by the respective parties on merits of the challenge are kept open.

9. The Writ Petitions are allowed. Rule is made absolute in aforesaid terms. No costs.

(A.S. CHANDURKAR, J.)

APTE