

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1256 OF 1994

Anant Digamber Choudhari]
Flat No.A-6, Building No.11,]
Haji Ali Government Officers']
Quarters, Bombay-400034]..Petitioner

Vs.

1. The High Court of Judicature]
at Bombay]
Through Its Registrar,]
High Court, Bombay.]
2. The Government of Maharashtra]
Through : The Govt. Pleader]
High Court (O.S.),Bombay.]..Respondents

...
Mr.N.Y.Gupte i/b T.R.Yadav Advocate for
Petitioner
Mr.A.A.Kumbhakoni, Associate Advocate General
with Mr.K.R.Belosey, Govt. Pleader, for
Respondents.
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**CORAM : DR.S.RADHAKRISHNAN AND
SMT.V.K.TAHILRAMANI, JJ.**

DATE : NOVEMBER 30, 2006

ORAL JUDGMENT : [PER SMT.V.K.TAHILRAMANI,J.]

1. In this petition under Article 226 of the
Constitution of India, the Petitioner has
impugned the order dated 18th March, 1994 passed
by the State of Maharashtra, whereby the
Petitioner is retired compulsorily.

2. The Petitioner was holding the position of Additional Chief Metropolitan Magistrate in the Hind Court, Mazgaon, Mumbai. On 23.3.1992, he passed a purported "Court Order" directing the Regional Passport Authority to issue passports to (1) Smt.Shahnaz Munir Ahmed Qureshi, (2) Master Jagar Munir Ahmed Qureshi, (3) Kumari Gulnaz Munir Ahmed Qureshi and (4) Smt.Nahid Anjum Sabir Qureshi. This purported "Court Order" was passed without there being any judicial proceedings before him in that regard. On receipt of the said order, the Regional Passport Officer (R.P.O.) forwarded the copy of the said order to the Honourable the Chief Justice of this Court by letter dated 27.3.1992 pointing out that the order seems to be illegal and the Petitioner had passed the order by way of favouring his friend and directed a civil servant to oblige his friend. This Court took cognizance of the said letter and initiated suo motu Criminal Revision Application i.e. Criminal Revision Application No.4 of 1992. In the said Criminal Revision Application the purported "Court Order" dated 23.3.1992 passed by the Petitioner was quashed

and set aside on 24.4.1992. The Petitioner was put under suspension by order dated 6.8.1992 issued under Rule 4(1)(a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Pursuant to the decision of the Disciplinary Committee in its meeting, the Petitioner was issued a charge sheet in March, 1993. The Petitioner replied to the said charge sheet and disciplinary inquiry was ordered against him into said charges levelled under Rule 3(1) of the Maharashtra Civil Services (Conduct) Rules, 1979. On completion of the inquiry, the Inquiry Officer who was then a Judge of the City Civil Court, Bombay, submitted his findings on 29.8.1993 and held that:-

(a) The order dated 23.3.1993 passed by the Petitioner was under the colour of his office;

(b) That he had no authority to pass the order;

(c) By passing the order, the Petitioner favoured his personal friend Advocate Mr. Baksh and his family members;

(d) The order was motivated by consideration other than judicial;

(e) By passing the order, the Petitioner behaved in a manner unbecoming of a Judicial Officer amounting to grave misconduct; and

(f) The Petitioner had failed to maintain absolute integrity.

However, in his recommendation, the Inquiry Officer suggested imposing any minor penalty contemplated by Rule 5(1) of the Maharashtra Civil Services (D & A) Rules, 1979.

3. The report of the Inquiry Officer was considered by the Disciplinary Committee consisting of High Court Judges in its meeting held on 26.10.1993. However, the Disciplinary Committee did not accept the recommendation of the Inquiry Officer in respect of imposing minor penalty and it considered imposing a major penalty and the Committee recorded its reasons for the same. A second show-cause notice was, therefore, issued to the Petitioner along with the Committee Report, to which he filed his reply on 16.11.1993. The Disciplinary Committee in its meeting held on 12.1.1994 considered the said reply and in view of the gravity of the charges

proved, decided to impose the major punishment of compulsory retirement from service under Rule 5(1)(vii) of the Maharashtra Civil Services (D & A) Rules. The recommendations were then, forwarded to the Government of Maharashtra, which in turn, issued the order of compulsory retirement dated 18.3.1994, which was served on the Petitioner on 21.3.1994. Hence, this petition.

4. The Petitioner challenged the order of punishment on various grounds. However, Mr.Gupte, the learned counsel for the Petitioner limited his arguments only to the point of disproportionality of punishment. It was submitted that the order dated 23.3.1992 passed by the Petitioner was not for any gain and in any case, the said order was set aside in the suo motu Criminal Revision Application No.4 of 1992 and therefore, this was a fit case to accept the recommendation of the Inquiry Officer of imposing minor penalty like stoppage of increment or demotion etc. It may be stated here that it is admitted that indeed, the Petitioner had passed the order dated 23.3.1992 and it is also admitted that the Petitioner could not have passed such an

order but it is submitted that the order was not passed for any gain, hence, a lesser punishment be imposed on the Petitioner.

5. On behalf of the High Court, the Registrar (Legal) has filed affidavit in reply and submitted that the lapse committed by the Petitioner is of serious nature and it smacks of highhandedness, irresponsible behaviour, tendency to misuse power and indicative of lack of absolute integrity. It has been further pointed out that the Judicial Officer is expected to maintain honesty and integrity beyond doubt. The reply has referred to the following observations of the Supreme Court in the case of **Naval Singh Vs. State of U.P. and another (2003) 8 S.C.C.**

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"The judicial service is not a service in the sense of an employment, Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their over all reputation. Further, the nature of judicial service is such that it cannot afford to suffer

continuance of who such Committee Judges writ exceptional Supreme with because retirement subjective authority. are required to be decided on the basis of the said principles."

in doubtful have evaluation of and petition, Court the order is based satisfaction The

service integrity lost their is done by High affirmed except circumstances, would not same, of the present

of or utility. If the Court the very the interfere particularly compulsory the the appeals

6. While setting aside the said purported "Court Order" dated 23.3.1992 in Criminal Revision Application No. 4 of 1992, this Court (on the Judicial Side) held that the said order was not only illegal but also unheard of in the Indian Judicial system and the conduct of the Judicial Officer in issuing the order at the behest of an advocate friend and that too without any judicial proceedings before him, required disciplinary action. It is well settled that the disciplinary Committee is not bound to accept the recommendation of the Inquiry Officer on quantum of punishment. So long as the Petitioner was heard on the proposed quantum of punishment, there was no illegality in imposing the major

penalty of compulsory retirement. The purported "Court Order" passed by the Petitioner did not emanate from any judicial proceeding and it was not only a direction to the passport office but indeed the said office was called upon by the Petitioner to submit a compliance report in a time bound manner. None was present on behalf of the passport office before the Petitioner when the said order was passed wherein the passports were directed to be issued within a specific period. When the said order was passed, the Petitioner had put in more than 12 years of service and with this experience, he was required to maintain the authority and dignity of law. The intention of the Petitioner in passing the said "Court Order" was writ large and he knew that he did not have the legal authority to pass the said order. Even otherwise, it is well settled that when the disciplinary authority awards punishment, this Court cannot sit in appeal over the quantum of punishment. The disciplinary committee in its deliberations held in two consequent meetings, decided to impose the major punishment of compulsory retirement. We are satisfied that there is no infirmity in the

said decision.

7. This petition, therefore, fails, hence
petition is dismissed. Rule is discharged with
no order as to costs.

[DR.S.RADHAKRISHNAN, J.]

[SMT.V.K.TAHILRAMANI,J.]