

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9820 OF 2013

Vilas Vishwambharrao Pathak

...Petitioner

versus

The Maharashtra Jeevan Pradhikaran
and another

...Respondents

.....
Mr. Avinash S. Deshmukh, advocate for the petitioner
Mr. D.P. Bakshi, advocate for respondent No.1
Mrs. V.A. Shinde, A.G.P. for respondent No.2-State
.....

**CORAM : S. S. SHINDE AND
V. K. JADHAV, JJ.**

**Date of Reserving
the order : 22.04.2014**

**Date of pronouncing
the order : 30.04.2014**

ORDER (PER:- JADHAV, J.) :-

1. By this writ petition, the petitioner is praying for quashing and setting aside the order dated 30.10.2006, issued by respondent No.1 imposing punishment of permanent withdrawal of total pension and pensionary benefits of the petitioner and further to issue necessary directions to the respondents to extend to the petitioner all consequential benefits of pension.

2. Brief facts, giving rise to the petition, are as follows:-

a) The petitioner was working as Deputy Engineering/Sub Divisional Officer on the establishment of respondent No.1 and retired from service upon attaining the age of superannuation on 31.10.2003. On 6.11.2000, respondent No.1 was pleased to initiate departmental enquiry against the petitioner pertaining to the period when the petitioner was working as Deputy Engineer at Omerga from 23.5.1997 to 13.6.2000. The petitioner came to be suspended on 13.6.2000 by respondent No.1 in contemplation of the said departmental enquiry, which was subsequently initiated against the petitioner.

b) On 6.11.2000, as aforesaid, by issuing memorandum of charge under Rule 8 of Maharashtra Civil Service (Discipline and Appeal) Rules 1979, the said departmental enquiry initiated prior to retirement of the petitioner, was continued even after retirement of the petitioner and finally concluded on 30.10.2006, when final order therein came to be issued. All ten charges levelled against the petitioner were proved in the said departmental inquiry.

c) The petitioner has thus challenged the order passed by respondent No.1 Pradhikaran on 30.10.2006 by filing appeal

before the President of Pradhikaran-cum-Minister of Water Supply and Sewerage Department of the Government on 27.11.2006, however, the appellate authority, after giving personal hearing to the petitioner, has been pleased to dismiss the appeal on 10.5.2013 and communicated the same to the petitioner.

d) On the backdrop of the facts and circumstances narrated herein above, the petitioner has filed this writ petition with the prayers, as stated in forgoing paragraph.

3. The petitioner has challenged the impugned order dated 30.10.2006 issued by respondent No.1 imposing punishment of permanent withdrawal of total pension and pensionary benefits on the ground that the Enquiry Officer has not recorded any findings to the effect that the petitioner was found to be guilty of "grave misconduct" or "negligence". Furthermore, the petitioner has also raised ground that the departmental enquiry against him was not completed within one year from the date of retirement and the same therefore, stood vitiated. According to the petitioner, inaction on the part of respondent No.1 in not completing departmental enquiry within stipulated period, is in violation of provisions contemplated under Rules 3 and 18 of the Manual of Departmental Enquiries. Lastly, the petitioner has

challenged the said order on the ground that one Mr. M.V. Domkondwar was the Chief Engineer and he had played certain role in relation to the work connecting with the allegations levelled against petitioner and show cause notice of punishment dated 29.5.2006 came to be issued by Mr. M.V. Domkondwar, as by that time he was occupying the post of Member Secretary of respondent No.1 Pradhikaran. According to the petitioner, it was not legal and permissible for Mr. Domkondwar to act in the capacity as petitioner's disciplinary authority.

4. In the affidavit in reply filed on behalf of the respondent No.1, it has contended that the charges levelled against the petitioner were serious and alongwith the petitioner ten other officers were also charge sheeted and a composite enquiry was initiated against all these officers, by appointing the inquiry Officer and the Presenting Officer. The respondent has followed principles of natural justice, provided every opportunity to the petitioner to make submissions, to produce documentary evidence, to examine his witnesses and cross examine the witnesses of the respondent. The enquiry was completed as fast as possible, therefore, period of six years for completion of enquiry cannot be said unreasonable period and departmental enquiry cannot be vitiated on this ground. It has contended that Enquiry Officer has recorded findings against each and every charges levelled against the

petitioner. It has also contended that the officer, who was working as Chief Engineer during pendency of the Departmental Enquiry, promoted to the post of Member Secretary and becomes automatically disciplinary authority. In that capacity he gets every right of imposing punishment after following due process of law.

6. We have heard learned counsel appearing for the petitioner and learned counsel appearing for respondent No.1 as well as learned A.G.P. for the respondent No.2 State. With the able assistance of learned counsel for the respective parties, we have perused the pleadings in the petition, annexures thereto and affidavit in reply filed on behalf of respondent No.1 Pradhikaran.

7. Learned counsel appearing for the petitioner has vehemently submitted that in absence of findings recorded by the Enquiry Officer to the effect that the petitioner is guilty of grave misconduct and negligent, the punishment of withholding entire amount of pension and gratuity is improper, incorrect and illegal. In support of this contention, learned counsel placed reliance on reported judgment of Supreme Court in the case of ***D.V. Kapoor vs Union of India, reported in 1990 AIR (SC) 1923*** and more particularly, paragraphs 5 and 6 thereof, which read as under:-

“5. It is seen that the President has reserved to himself the right to withhold pension in whole or in part thereof whether permanently or for a specified period or he can recover from pension of the whole or part of any pecuniary loss caused by the Government employee to the Government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service of the original or on re-employment. The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5), explanation (b) which is an inclusive definition, i.e. the scope is wide of mark dependent on the facts or circumstances in a given case. Myriad situation may arise depending on the ingenuity with which misconduct or irregularity was committed. It is not necessary to further probe into the scope and meaning of the words 'grave misconduct or negligence' and under what circumstances the findings in this regard are held proved. It is suffice that charges in the case are that the appellant was guilty of willful misconduct in not reporting to duty after his transfer from Indian High Commission at London to the Office of External Affairs Ministry, Government of India, New Delhi. The Inquiry Officer found that though the appellants derelicted his duty to report to duty, it is not willful for the reason that he could not move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension in consultation with the Union Public Service Commission.

6. As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his

duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs.60.”

Consequently, the Supreme Court has concluded the matter in para 8 of the judgment, which reads as under:-

“8. In view of the above facts and law that there is no finding that appellant did commit grave misconduct as charged for, the exercise of the power is clearly illegal and in excess of jurisdiction as the condition precedent, grave misconduct was not proved. Accordingly, the appeal is allowed and the impugned order dated November, 24, 1981 is quashed but in the circumstances parties are directed to bear their own costs.”

8. In the above cited case, no finding was recorded that the delinquent was guilty in discharge of public duty in office, as defined under Rule 8 (5), explanation (b). In para 4 of the said judgment, the Supreme Court dealt with the provisions of Civil Services Conduct Rules, 1964 and more particularly Rule 3 (i) (ii) and (iii) and Rule 8(5) of the said Rules. Rule 8(5) explanation (b) defines ‘grave misconduct’ thus:-

“The expression ‘grave misconduct’ includes the communication or disclosure of any secret official Code or password or any

sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interest of the general public or the security of the State.”

The expression ‘grave misconduct’ is not defined under the Maharashtra Civil Service (Conduct) Rules 1979. Rule 3 of the Maharashtra Civil Service (Conduct) Rules 1979 speaks about duty of Government servant to maintain integrity and devotion to duty etc. which reads as under:-

“3. Duty of Government servant to maintain integrity, devotion to duty, etc. - (1) Every Government servant shall at all times-

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a Government servant.

(2) Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority.

(3) No Government servant shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever

practicable, and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

(4) Nothing in sub-rule (3) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from, or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities."

9. In view of the above, the findings about 'grave misconduct' as insisted upon in the case cited above, is not required to be recorded by the Enquiry Officer, in consonance with the provisions of Maharashtra Civil Services (Conduct) Rules 1979. Thus, in our opinion, the above cited case cannot be made applicable to the facts and circumstances of the present case.

10. We have gone through the contents of all 10 charges levelled against the petitioner for which the Enquiry Officer has recorded the findings in affirmative. The Enquiry Officer has dealt with each and every charge separately, considered the submissions made by the Presenting Officer and the delinquent employee in detail, recorded the findings on each of such charge with elaborate discussion and by referring relevant documents, the Enquiry Officer has framed and recorded findings on following 10 charges.

- दोषारोप क्र. 1 – दर सुचीस मंजूरी नसतांना देयके प्रदान करणे.
- दोषारोप क्र. 2 – मुरुम बेडींग बॉक्सींगची चुकीची/जास्तीची मापावर टककेवारी चेक न देता देयके अदा करणे.
- दोषारोप क्र. 3 – रेती ऐवजी मुरुम वापरल्याने त्या मधील फरकासाठी दर कमी न केल्यामुळे झालेले अतिप्रदान रु.4066303/-
- दोषारोप क्र. 4 – बाहेरुन मुरुम आणल्याचे दर्शवुन अतिरिक्त बाब दर सुची केल्याने झालेले अतिप्रदान रु.16324831/-
- दोषारोप क्र. 5 – पाईप पोटी रक्कम देय नसतांना अदा करणे रु.3031128/-.
- दोषारोप क्र. 6 – ए.सी. पाईप पुरवठ्याबाबत वसुली न करणे रु. 200000 /—
- दोषारोप क्र. 7 – कठीण खडकातील परिमाणात फरक असल्याने त्या साठी परिमाणात जास्तीची वाढ दाखवुन झालेल्या अति प्रदानाची रक्कम रु.541228/-.
- दोषारोप क्र. 8 – कामाची विभागणी करुन एकाच दिवशी ब—याच दरसुचीवर कामे मंजुर करणे.
- दोषारोप क्र. 9 – योजनेवर मंजूरीपेक्षा जास्त खर्च करणे.
- दोषारोप क्र. 10 – अंतिम देयक मंजुर करण्यापूर्वी केलेल्या कामानुसार सर्व रेकॉर्ड डॉईंग्ज पुर्णतः तयार केलेले नव्हते.

11. The Disciplinary authority having regard to the findings recorded on all articles of the charges, as aforesaid, and after giving opportunity of being heard to the petitioner, by providing him a copy of enquiry report in advance, considered each and every charge levelled and proved against the petitioner, in the light of explanation tendered and accordingly imposed the punishment by order dated 30.10.2006, which is impugned in the present petition.

12. The petitioner has challenged the said order passed by respondent No.1 Pradhikaran on 30.10.2006 by filing appeal before

the President of Pradhikaran-cum-Minister of Water Supply and Sewerage Department of the Government of Maharashtra. In the said appeal also, the report of the Enquiry Officer was considered and it is held that the punishment imposed by the Disciplinary authority is co-relative or commensurate with the gravity of charges levelled and proved against the petitioner. It has specifically observed in the said order dated 10.5.2013, placed on record at Exhibit "J" that the petitioner is responsible for the loss to the tune of Rs.2.00 Crores caused to respondent No.1 Pradhikaran on account of said misconduct/irregularities.

13. We are of the opinion that though the finding of 'grave misconduct' or 'negligence' is not required to be recorded in view of the provisions of Maharashtra Civil Services (Conduct) Rules, 1979 and the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, the charges levelled and proved against the petitioner are grave in nature and punishment imposed by the respondent Disciplinary Authority is commensurate with the gravity of the charges. We find no reason to interfere in it.

14. So far as the other points raised by the petitioner are concerned, we do not find any substance in it. On perusal of G.R. dated 24.2.1997, it appears that the directions have been given to initiate

departmental enquiry prior to retirement of the delinquent employee as far as possible and under special circumstances, if it is to be held after the retirement, the Enquiry Officer and the Presenting Officer shall be appointed within a period of two months and the enquiry is to be completed within a period of one year. In this case, admittedly, the enquiry was commenced three years prior to the date of retirement of the petitioner.

15. According to the petitioner, it was not legal and permissible for Mr. Domkondwar to act in the capacity as petitioner's Disciplinary authority at the time of issuing the impugned order dated 30.10.2006. Mr. Domkondwar was working as Chief Engineer during pendency of the departmental enquiry, promoted to the post of Member Secretary and becomes automatically disciplinary authority. However, after going through entire record, we find that the petitioner has never raised this contention before the disciplinary authority while making his defence in response to show cause notice issued by the disciplinary authority for imposing punishment. Furthermore, the petitioner has not demonstrated as to how the said factor caused prejudice to his defence raised before the disciplinary authority. In this contention also, we find no substance.

16. In the light of above discussion, we do not find that the petitioner

has made out any case so as to interfere in the impugned order dated 30.10.2006 passed by the disciplinary authority. Thus, the writ petition stands dismissed. No costs.

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)

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