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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1437 OF 1999

T.B.KADAM,
Age : Major, Occ : Service as
Extension Officer (Agriculture),
Panchayat Samiti, Sindkheda,
District Dhule.

...PETITIONER

-VERSUS-

CHIEF EXECUTIVE OFFICER,
Zilla Parishad, Dhule,
Tq. & Dist.Dhule.

...RESPONDENT

...

Advocate for Petitioner : Shri Shrimant Mundhe h/f Shri Shaikh Faruk V. Patel.

Advocate for Respondents : Shri D S Bagul.

...

**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 20th August, 2015**

Oral Judgment:

1 This petition was admitted by order dated 23.03.1999. Interim relief was refused by this Court. The request for expediting the matter and for early final hearing was also rejected by the said order dated 23.03.1999.

2 The contention of the Petitioner is that false and fabricated charges were levelled upon him. The Petitioner was held guilty of several

charges which ultimately resulted in the passing of the order of punishment dated 04.11.1998 by which he was compulsorily retired and the misappropriated amount of Rs.63,911/- was directed to be recovered from the gratuity payable to him.

3 Aggrieved by the same, the Petitioner preferred an appeal before the Additional Commissioner, Nashik Division, Nashik. The said Appeal No.55/1998 has been partly allowed by the impugned judgment dated 29.12.1998 by which the Petitioner's punishment was reduced and he was reverted to the post of Block Development Officer and the period of his compulsorily retirement was treated as being on leave. The direction of recovery was not interfered with.

4 Shri Mundhe, learned Advocate for the Petitioner, submits that the Petitioner joined the Zilla Parishad as a "Gram-Sevak" on 13.04.1966. At the relevant time in 1991, he was incharge of four villages. Cyclone struck district Dhule in 1991 and virtually destroyed 3700 houses.

5 He further submits that despite there being no involvement of the Petitioner, the Chief Executive Officer, Zilla Parishad issued notice dated 30.11.1995 calling upon the Petitioner to show cause why a departmental enquiry should not be initiated against him as per the

charge sheet enclosed to the said notice.

6 Shri Mundhe submits that the charges of misappropriation, showing false attendance of workers, not taking entries of the work down, faulty construction, etc. were levelled upon the Petitioner. On the basis of the Enquiry Officer's report dated 07.03.1998, charge Nos.1, 3, 4, 5 and 8 were held to be proved against the Petitioner. Charge Nos.2 and 6 were held to be partly proved. He was exonerated of Charge No.7 levelled upon him.

7 The Petitioner has canvassed a host of factors including that the Enquiry Officer of the same rank was appointed to conduct an enquiry. Section 178 of the Maharashtra Village Panchayats Act provides for the officers to be held responsible. The Petitioner does not fall within the said category. He has been victimized. Those actually responsible for having committed misdeeds have not been proceeded against.

8 Shri Mundhe further submits that the Petitioner's appeal was partly allowed by the competent authority vide the impugned judgment. The said authority lost sight of the fact that none of the charges could be held to be proved against the Petitioner. It is, therefore, submitted that the report of the Enquiry Officer be quashed and set aside and the impugned

judgment be also set aside thereby, restoring the position of the Petitioner notionally so as to entitle him for all the retiral benefits. The Petitioner has attained the age of superannuation in 2000.

9 Shri Bagul, learned Advocate appearing for the contesting Respondent, has opposed the petition. He submits that this Court in its supervisory/ writ jurisdiction cannot go into the findings of the Enquiry Officer threadbare and cannot interfere with the Enquiry Officer's findings. The conclusions arrived at by the Enquiry Officer have been tested subject to the explanation given by the Petitioner. In fact the Petitioner was compulsorily retired on account of charges of misappropriation having been proved against him.

10 Shri Bagul further submits that the competent authority has interfered with the punishment and has scaled down the punishment from compulsorily retirement to reverting the Petitioner to the position of Block Development Officer. Consequentially, the Petitioner continued in service and has retired in 2000. He was eligible for retiral benefits. Shri Bagul, therefore, submits that the punishment awarded is commensurate and this Court cannot interfere in the quantum of punishment as if it is a Court of appeal.

11 I have considered the strenuous submissions of the learned Advocates for both the sides and I have also gone through the record available with their assistance.

12 Insofar as the charge sheet is concerned, I have considered the submissions of Shri Mundhe, learned Advocate for the Petitioner, that the charges could not have been levelled upon the Petitioner and the same are ambiguous. I am unable to accept his contention looking to the specific charges enumerated in the charge sheet. I do not find that the charge sheet could be termed as vague or ambiguous.

13 The competent authority, which is the disciplinary authority, has considered the Enquiry Officer's report and the submissions of the Petitioner. By the order of punishment dated 04.11.1998, the competent authority has considered every charge levelled upon the Petitioner in the light of the conclusions drawn by the Enquiry Officer and the submissions of the Petitioner.

14 By a speaking order, the Disciplinary Authority found it appropriate to award the punishment of compulsorily retirement to the Petitioner under Rule 4(5) of the Bombay Zilla Parishad District Services (Discipline and Appeal) Rules, 1965. The amount misappropriated was

rightly directed to be recovered from the gratuity amount.

15 The Apex Court in the case of *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs. Secretary, Sahakari Noukarara Sangha*, **2000(7) SCC 517 : AIR 2000 SC 3129** has held that misappropriation either of a small amount or a big amount is insignificant. Misappropriation in itself is a grave and serious misconduct. The Apex Court has in fact concluded that once the charge of misappropriation is proved, the Employer as well as the Courts should not even consider the clean past service record of the Employee since it cannot mitigate the seriousness and gravity of the charge of misappropriation. The said observations in paragraph Nos.3, 6 and 8 are as under:-

“3. *The question involved in these appeals is – whether the High Court was justified in confirming the order passed by the Labour Court reinstating the respondents-workmen with 25% back wages inspite of specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established. Apparently, it would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or legalised by reinstatement in service with full or part of back wages.*

6. *As stated above, the learned Single Judge and the*

Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the Management removing the workmen from the service and reinstating them with 25% back wages. Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled. [Re.: Municipal Committee, Bahadurgarh v. Krishnan Behari and Others (1996) 2 SCC 714]. In U.P. State Road Transport Corporation v. Basudeo Chaudhary and another [(1997) 11 SCC 370] this Court set aside the judgment passed by the High Court in a case where a conductor serving with the U.P. State Road Transport Corporation was removed from service on the ground that alleged misconduct of the conductor was attempt to cause loss of Rs. 65/- to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering @ Rs.5.35 per head and also by making entry in the waybill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corporation Ltd. and another v. Kala Singh and Others [(1997) 6 SCC 159], this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting the milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held that in view of proof of misconduct a necessary consequence will be that Management has lost confidence that the

workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11A of the I.D. Act to grant relief with minor penalty.

8. *In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.”*

16 It was thus, settled by the Apex Court that in cases of misappropriation even if a small amount is involved, such employees do not deserve to be kept in employment.

17 The Division Bench of this Court in the case of *P.R.Shele vs. Union of India and others* reported in **2008 (2) Mh.L.J. 33**, dealing with the issue of misappropriation, has concluded that the quantum of misappropriation is not a matter of consideration. The amount is not material. It was held in paragraphs 14, 15 and 16 as follows:-

- “14. *That takes us to the last submission of learned counsel for the petitioner as regards the alleged disproportionate punishment. In this connection our attention is drawn by Mr. Suresh Kumar, learned counsel appearing for the respondent, to the judgment of the Supreme Court in Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane, (2005) 3 SCC 254 where the employee had misappropriated the funds of the appellant Corporation. The employee was removed from service. The High Court directed reinstatement with full back wages and continuity of service. The*

Supreme Court observed that while dealing with the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. The Supreme Court further observed that when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal. The Supreme Court restored the dismissal order passed by the Disciplinary Authority.

15. We may also refer to another judgment of the Supreme Court in *Managing Director, North-East Karnataka Road Transport Corpn. v. K. Murti*, (2006) 12 SCC 570. The relevant paragraph of the judgment may be quoted:-

"The learned counsel for the appellant, at the time of hearing, placed strong reliance on the two decisions of this court, one in *Regional Manager, Rajasthan SRTC v. Ghanshyam Sharma* which was also a case of bus conductor carrying passengers without issuing tickets. This court, in the above case, held that carrying the passengers without tickets amounts to dishonesty or grave negligence and for such misconduct punishment of removal from service is justified. This court also further observed that the Labour Court was not justified in directing the reinstatement with continuity of service but without back wages. This Court has also relied upon a judgment in *Karnataka SRTC v. B. S. Hullikatti*. In the said judgment, this Court has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a rate less than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court has also observed

that in cases like the present, orders of dismissal should not be set aside. The learned counsel for the appellant also cited Divisional Controller, N.E.K.R.T.C. v. H.Amaresh. In this case, this Court was considering the case of misappropriation of a small amount of State Road Transport Corporation's fund by a conductor and held it a grave act of misconduct, which resulted in financial loss to the Corporation. This Court also held that punishment of dismissal from service awarded by the disciplinary authority did not call for any interference by the Labour Court or the High Court and hence the order of reinstatement passed by the High Court was set aside. This Court also in a catena of decisions held that the Tribunal should not sit in appeal over the decision of any employer unless there exists a statutory provision in this behalf. This Court also observed that the High Court gets jurisdiction to interfere with the punishment in the exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved."

16. *In this case the Divisional Authority, the Appellate Authority as well as the Revisional Authority have held the petitioner guilty. It is observed that the special cancellations were made by the terminal manned by the petitioner. The privilege of special cancellation can only be accessed, if the appropriate user ID and password are entered. The password being confidential is known to the concerned Enquiry Reservation Supervisor who enters his User ID and password. It is observed that the concerned Enquiry Reservation Officer at the relevant time was the petitioner. Conduct of the petitioner is despicable. It shows dishonesty. As said by the Supreme Court, the amount involved is immaterial. It is the conduct and its effect which needs to be seen. If the respondents feel that such a person should not be allowed to work in railways which is a service essentially meant for general public their action of removing him from service cannot be faulted."*

18 However, it cannot be overlooked that the impugned judgment of the Appellate Authority has not been called in question by the Respondent/ Zilla Parishad and as such, the matter rests on the impugned judgment to that extent.

19 The contention of the Petitioner is that the impugned order though scaled down the punishment awarded to him, is rendered perverse and erroneous since the Appellate Authority should have arrived at a conclusion that none of the charges levelled upon the Petitioner can be said to be proved and as such, the Petitioner should have been exonerated from the charges held to be proved against him.

20 I am not in agreement with the submission of the Petitioner. The Appellate Authority while scaling down the punishment has shown sympathy towards the Petitioner. While doing so, it has scaled down the punishment by which the Petitioner was reinstated and was reverted to the position of Block Development Officer.

21 Considering the charges proved against the Petitioner and the law crystallized by the Apex Court, I am unable to agree with the Petitioner that the punishment awarded by the impugned judgment of the

Appellate Authority can be said either to be shockingly disproportionate or that the Petitioner should have been exonerated from all the charges held to be proved against him. Merely because the Petitioner attempts to brand the findings of the Enquiry Officer as perverse would not be sufficient.

22 The Apex Court has crystallized the position in law that even if some evidence is available before the Enquiry Officer to reasonably support the conclusion drawn in the findings of the Enquiry Officer, it would not be within the scope of judicial review to enter into the aspect of insufficiency of evidence and conclude that the findings of the Enquiry Officer suffer from perversity since there is no evidence to prove the charges beyond reasonable doubt. The following judgments need a reference on this issue:-

- (i) *L.K.Verma Vs. HMT Ltd.& Anr., (2006)2 SCC 269 : 2006 (I) CLR 854 SC;*
- (ii) *Saini R.S. Vs. State of Punjab & Ors., 1999 – II LLJ 235;*
- (iii) *Muralilal Ramharak Gupta Vs. India Link Chain Manufacturers Ltd., 2005 II CLR 674;*
- (iv) *Ware's Educational Trust & Anr. Vs. Subhash Bhagwan Khedkar & Anr., 2015(2) Mh.L.J. 870;*
- (v) *Workmen of the Motipur Sugar Factory Pvt.Ltd. Vs. The Motipur Sugar Factory, AIR 1965 SC 1803;*
- (vi) *Mahatma Phule Krishi Vidyapeeth Vs. 1.Vitthal*

Sakharam Kadam & Anr., (2010) 1 Mah L.J. 818.

23 The Apex Court while considering the scope of judicial review and the powers of the High Court in its writ and supervisory jurisdiction, has held in *Syed Yakoob v/s K.S.Radhakrishnan* reported in **AIR 1964 SC 477** in paragraph 7 and 8 as under:-

“7. *The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which*

has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art.226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmed Ishaque*, 1955-1 SCR 1104: ((S) AIR 1955 SC 233); *Nagendra Nath v. Commissioner of Hills Division*, 1958 SCR 1240 : (AIR 1958 SC 398) and *Kaushalya Devi v. Bachittar Singh*, AIR 1960 SC 1168.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases. the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt

that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

24 The Apex Court has once again considered a similar issue in the matter of *Surya Dev Rai v/s Ram Chander Rai* reported in **AIR 2003 SC 3044.**

25 In the light of the above, the impugned order awarding punishment to the Petitioner cannot be said either to be perverse or erroneous or likely to cause grave injustice to the Petitioner.

26 This Writ Petition is devoid of merit and is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)