

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

WRIT PETITION NO. 3912 OF 2004

Mahadev s/o. Tukaram Joshi .. Petitioner
Age. 45 years, Occ. At present Nil,
R/o. "Endrayani", House No.909,
Plot No.9, Near Navnath Temple,
Bolhegaon, Ahmednagar,
Taluka & District – Ahmednagar.

Versus

1. The Hon'ble High Court of Judicature.. Respondents
at Bombay, through the Registrar
(Administration), Appellate Side,
High Court of Judicature at Bombay,
High Court Building, Fort, Mumbai.
2. The District & Sessions Judge,
Ahmednagar.
3. The Enquiry Officer and the
Civil Judge, Senior Division,
Sangamner, Taluka – Sangamner,
Dist. Ahmednagar.
4. The State of Maharashtra,
Through the Secretary,
Department of Law and Judiciary,
M.S., Mantralaya, Mumbai.

Mr. A.S. Deshmukh h/f. Mr. R.S. Deshmukh, Advocate for
the petitioner.

Mr. C.K. Shinde, Advocate for respondent Nos. 1 & 2.

Mr. A.R. Kale, AGP for respondent/State.

**CORAM : A.V.NIRGUDE &
V.K.JADHAV, JJ.
DATED : 13.10.2015**

ORAL JUDGMENT [PER : A.V. NIRGUDE, J.] :-

1. This petition challenges judgment and order passed by the Administrative Side of High Court of Judicature at Bombay in Administrative Appeal No. B-1/1067/2003. The appeal was dismissed. The facts leading to this litigation in short can be stated as under :-

2. The petitioner a peon was attached to Jt. C.J.J.D., Court, Shrirampur. On 5th April, 1990, while he was on duty at the residence of a Judge, he left the place of his duty and came to the Court premises. He had quarrel with other peons Tuwar and Jadhav. There he forcibly removed some cash from the pocket of one of the victims. He was demanding money from them for consuming liquor etc. When the incident took place, he was under influence of liquor etc. This incident became subject matter of Departmental Enquiry and the Enquiry Officer, who was a Civil Judge, Senior Division, held him guilty and referred the matter to the District Judge for further action. Being disciplinary authority, the District Judge awarded penalty of removal from service. As said above, the Administrative Appeal was also dismissed.

3. The scope for us at this stage after two proceedings is quite limited. Learned Counsel for the petitioner is quite aware of it. He raised few points which we would discuss one by one.

4. First point he raised is about the contents of memorandum of charge, which was served on the petitioner before enquiry was conducted. In this memorandum, after giving description of the alleged misconduct, the petitioner was given direction to make his submission and was informed that if found guilty he would be liable to be punished under the provisions of Rule 49 of Civil Services (Classification, Control and Appeal) Rules and Maharashtra Civil Services (Discipline and Appeal) Rules. These Rules were long back repealed. In-fact, when the D.E. was conducted, it followed procedural formalities provided by Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules. Learned Counsel for the petitioner asserted because of reference to the Rules, which were repealed, a grave prejudice was caused to the petitioner.

. On perusal of the record, we find no substance in this submission. In the memorandum, there is certainly error when the Rules were referred to. The Rules referred to in the memorandum were not applicable to the case.

Other Rules were applicable. However, when the enquiry was started, ample opportunities were given to the petitioner and till date probably no objection on this basis was raised. In any case, no prejudice was caused because of incorrect mention of the rules in the memorandum. Therefore, this objection raised by learned Counsel is of no avail to the petitioner.

5. Learned Counsel for the petitioner then pointed out to us by referring to the report of the Enquiry Officer that no opportunity to defend the case was given to the petitioner and that the Enquiry Officer conducted enquiry in haste and did not afford sufficient opportunity to the petitioner to cross-examine the witnesses. We perused the copy of Roznama, which is annexed to the petition and noticed that on number of occasions notices were issued to secure presence of the petitioner before the Enquiry Officer and on number of occasions notices came back unserved. On some occasions, Process Server even obtained signatures of the petitioner on the notices acknowledging its receipt and yet the petitioner did not attend the dates of the Enquiry proceedings. Ultimately, the petitioner remained present on 10.01.1992. The memorandum of charge was read over and explained to him in Marathi. The petitioner had already submitted defence statement earlier. He submitted

further statement and he also stated that he did not want to give evidence and would not cross-examine the witnesses. He even suggested to the Enquiry Officer that he would remain absent and in his absence also the enquiry should be concluded and thus petitioner left the proceedings and on next date when the witnesses remained present for giving deposition, the petitioner remained absent. The depositions of the witnesses thus went uncontroverted on record.

6. When the petitioner went before the Disciplinary Authority, he did not make any submission or made no request seeking remand of the case, so that he could cross-examine the witnesses and participate in the proceedings meaningfully. On the other hand, the petitioner took a stand that the Enquiry Officer at the relevant time pressurized him and obtained from him statement in writing. The record certainly does not support this contention. What is important to note here is that the petitioner even at that stage did not want to contest the case on merits. He was aware that evidence had gone unchallenged against him and that he ought to have cross-examined the witnesses. Despite this, he remained defiant even before learned District Judge. Thereafter, the petitioner could have availed two opportunities to press his administrative appeal before

the Administrative Side of High Court, but even at that stage also he did not seek an opportunity to go back to the Enquiry stage for defending his case on merit. Even in this petition, no such prayer or suggestion is made.

7. Learned Counsel for the petitioner despite these circumstances tried to blame the Enquiry Officer asserting that he made haste in concluding the proceedings. The facts and circumstances of this case did not support this contention. As indicated above, it was the petitioner, who did not want to participate in the proceedings and to get a finding on merits. He remained defiant since beginning and therefore the Enquiry Officer probably felt helpless. The Enquiry Proceedings were pending before the Enquiry Officer for about two years. On the crucial day i.e. on 21st January, 1992, when the evidence of witnesses was recorded, the petitioner remained absent. It is not his case that he was not aware of the date and that he did not have notice etc. The petitioner ought to have contested the proceedings by appointing next friend. He had ample opportunity to appoint some one as next friend. He at the beginning of the Enquiry had made an application for seeking permission to appoint advocate to defend his case and such application was partly rejected. Yet the petitioner was not precluded from appointing next

friend to defend his case.

8. Learned Counsel for the petitioner then pointed out to us that the penalty awarded to the petitioner is disproportionate to the proved misconduct. We are not inclined to accept this contention also. The petitioner on the day of incident had completed nearly ten years services. Having regard to his stand taken at the time of enquiry, he did not feel any repentance. Even otherwise, the misconduct that is proved against him is of grave nature. The petitioner was found manhandling his colleagues under influence of liquor in Court premises.

9. We are, therefore, inclined to dismiss the petition. The writ petition stands dismissed. Rule discharged.

[V.K.JADHAV, J.]

[A.V. NIRGUDE, J.]