

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO. 6522 OF 2014 WITH  
CIVIL APPLICATION NO.10325/14, 12913/14,7333/14,  
9911/14**

**WITH**

**WRIT PETITION NO.10797/14**

**WITH**

**CONTEMPT PETITION NOS.143/2014 & 556/2014  
IN WRIT PETITION NO.257/2013**

Suresh Gangadhar Dharasurkar  
Age 70 years, Occ-Pensioner  
R/o Dr.Anil Borarkar "Renuka"  
Padampura, Aurangabad-431005

.. PETITIONER

VERSUS

- 1] Secretary,  
Public Works Department  
Mantralaya, Mumbai-32
- 2] The Information Commissioner  
Aurangabad. Collector Compound  
Aurangabad-431001
- 3] The Chief Secretary  
General Administration  
Department  
Mantralaya, Mumbai-32

.. RESPONDENTS

...

Petitioner party in person  
Mr.K.G.Patil, AGP for Respondents State.

...

**CORAM : S.V.GANGAPURWALA &  
V.L.ACHLIYA,JJ  
DATE : 23/2/2015**

**ORDER : [PER V.L.ACHLIYA,J.]**

Both these Petitions with Civil Applications filed therein and the Contempt Petitions are heard and taken up together for disposal by common order, as the grievance made therein is more or less identical.

2] Petitioner has filed Writ Petition No.6522/2014 in which he has claimed the following reliefs :

[a] The respondent No.1 be directed to decide the two representations dated 23/09/2013 [Exhibit-B colly.] submitted by the petitioner in a particular period as found fit and proper by this Hon'ble High Court.

[b] The respondent No.1 be directed to provide copies of relied documents and documentary evidence in support of enhancement of punishment to the petitioner in the particular period as found fit and proper by this Hon'ble High Court.

[c] The respondent No.1 be directed to issue a copy of the committee report [Committee is formed as per order of the respondent No.1 dated 20/08/2013 and please refer Exh.'F'.]

Pending disposal of Writ Petition No.6522/14 the petitioner has filed Civil Application Nos.7333/14,10325/14,and 12913/14 seeking various directions as against respondent no.1.

3] The petitioner has taken out Contempt Petition Nos.143/14 and 556/2014 for taking action for non compliance of order dated 21/08/2013 passed in Writ Petition No. 257/2013.

4] Petitioner has filed another Writ Petition No.10797/14 for drawing adverse inference against respondent no.1 i.e. the Secretary, P.W.D., for not deciding the representation and making available copies of the documents as sought by the petitioner. In said Petition, petitioner has claimed reliefs as under :

“[a] To draw adverse inference against the Secretary Public works and to order the Secretary Public works (Respondent No.1) to reduce the higher punishment of removal to reversion from date of removal 23.1.1991 as per representations dated 23.9.2013 (Exhibit'E') submitted to the respondent no.1 and grant all consequential reliefs such as pensionary benefits annual increments etc. by treating the petitioner as if he was in service.”

5] Respondent no.1 has filed exhaustive reply in Writ Petition No.10797/14 and denied the entire case as put forth by petitioner of non compliance of order passed in Writ Petition No.257/13. In nutshell, the respondent no.1 has specifically pleaded that the orders passed by this Court in Writ Petition No.257/13 has been duly complied. The documents running into more than 1000 pages have been supplied to the petitioner. So also, the detail

order has been passed after considering the representations dated 23/9/2013 made by petitioner. It is the say of respondent no.1 that filing of such petitions and applications one after other is nothing but gross abuse of law on the part of petitioner and also an attempt to reopen issues which have been concluded in earlier proceedings between Petitioner and Respondent No.1.

6] We have heard the petitioner who appeared in person as well as learned A.G.P. for the State and also perused the record and proceedings. In nut shell, it is say of petitioner that inspite of direction given by this Court in Writ Petition No.257/13, the respondent no.1 has not provided the particular documents, which he has claimed. It is further say of the petitioner that though the enquiry officer has recommended to award punishment of reversion, the disciplinary authority has awarded punishment of removal from service which according to him is against law. In support of this submission, the petitioner has placed reliance on the decision of Apex Court in the case of **Yoginath Bagade Versus State of Maharashtra reported in AIR 1999 S.C. Page 3734.**

7] On the other hand, learned AGP for the State by referring the checkered history of the matter and earlier orders passed by Maharashtra Administrative Tribunal as well as this Court, strenuously contended that the Petitions filed by petitioner are classic example of gross abuse of process of law on the part of petitioner. It is pointed out that the grievance agitated in these petitions has been duly considered and decided by this Court in the earlier petitions filed by the Petitioner as against the order passed by the disciplinary authority and confirmed by the

Maharashtra Administrative Tribunal. The order passed therein and subsequent review petition also challenged before Supreme Court. Through out, order passed by disciplinary authority has been maintained. In spite of that the petitioner is again and again raising the same grievance and making an attempt to reopen the issues which have been finally concluded in the earlier proceedings. The learned AGP has urged to dismiss petitions together with Civil Applications with exemplary costs.

8] We have thoroughly considered the rival submissions in the light of checkered history of the case and orders which are earlier passed in various proceedings filed by the petitioner. On careful examination of the grievance of the petitioner in the light of earlier order passed, we are of the view that filing of these petitions is nothing but gross abuse of process of law at the instance of the petitioner and also an attempt to reopen the issues which have been concluded by the orders earlier passed in the matters by this Court. Since the Respondent No.1 has provided the documents and also decided the representation Dated 23/09/2013 made pursuant to the order passed in Writ Petition No. 257/2013, no cause survive for the Petitioner to prosecute these petitions.

9] While disposing of representation dated 23/9/2013 made by the petitioner pursuant to order dated 21/8/2013, passed in Writ Petition No.257/2013, the respondent no.1 Secretary, P.W.D. has passed well reasoned and speaking order. The order passed by respondent no.1 reflects that the petitioner has filed as many as 25 proceedings before the various Courts as against the Public Works Department. It is apparent from the record that in the year

1977, the petitioner was subjected to face departmental enquiry on the following charges :

“I] Demanding illegal gratification from private parties

II] Carrying out an HT inspection when not authorised to do so.

III] Carrying out superficial inspections and

IV] Making false/incorrect inspection notes.”

The charge sheet alongwith accompaniments which include documents and the evidence relied by authority was served upon the petitioner on 23/11/1977. After receiving the charge sheet on 24/11/1977 the petitioner made application to the enquiry officer i.e. the Superintending Engineer, Sub Police Circle, Navi Mumbai, requesting him to allow the inspection of documents in respect of enquiry initiated against him. The enquiry officer granted that request.

10] Respondent no.1 has mentioned the facts in detail in respect of departmental inquiry proceeding against petitioner in order passed and communicated to petitioner vide letter dated 26/11/2014 communicated to petitioner pursuant to the order passed in Writ Petition No.257/2013. It is apparent from the facts narrated therein that after filing of charge sheet the petitioner was given full opportunity to inspect the documents. During the course of enquiry, he has made various applications and same were duly considered by the enquiry officer. It appears that right

from beginning the petitioner made an attempt to any how protract the departmental enquiry by filing various applications and raising numerous objections. Thereby he has successfully stalled the enquiry for years together. The enquiry was ultimately completed in the year 1987. The enquiry officer has submitted report of enquiry in which he has concluded that the charges levelled against the petitioner were proved and suggested punishment of reversion of the petitioner to the post lower in rank held by petitioner. On due consideration of the report of enquiry and the charges proved against the petitioner, and after issuing the final show cause notice to the petitioner, the respondent No.1. i.e. the Secretary, P.W.D. has made the recommendation to Government i.e. Disciplinary Authority which reads as under :

“As per the provisions contained in para 6.30(4) of Manual of Departmental Enquiry, the Enquiry officer is expected to give his charge wise findings on the charges levelled against the delinquent, as to whether the charges are proved or not. Similarly, as per rule-9 of the Maharashtra Civil Services ( Discipline and Appeals) Rules, 1979 the findings of the Enquiry officer are not binding on the Disciplinary Authority. The Disciplinary Authority can come to its own conclusion disagreeing findings of Enquiry Officer by recording the reasoning for the same. Accordingly, taking into consideration the enquiry report as well as the related documents regarding the Enquiry initiated against Shri Dharasurkar, the then Secretary II, Public Works Department noted that, “ **Shri Dharasurkar has tried his best to prolong and obstruct this enquiry even by going to Court and asking for inspection of documents, not attending hearings, etc. More than enough opportunities have been given to him for defense. He submitted only one defense**

**statement ( that too as a result of High Court Case) just denying the charges. While I agree with the findings of the E.O. in respect of the charges, I consider the punishment proposed to be mild. The charges are very serious and have been proved viz. Demanding illegal gratification, etc. With this aim Shri Dharasurkar has even resorted to carrying out inspection of H.T. beyond his jurisdiction ( that too superficial and for show ) and issuing false inspection notes. All this indicated his character and morals. But for the complaints by aggrieved parties, this would have not come to light. He is not fit to be continued in Govt. Service and deserves an exemplary punishment. The only punishment that can be inflicted on such officers is dismissal. However, considering his young age, I propose that, a punishment of 'removal from service' should be inflicted on him."**

11] The Government has accepted the above quoted recommendation made by Secretary, P.W.D. and pleased to pass order dated 23/1/1991 to remove the petitioner from Government service. The order of removal from service passed against the petitioner was challenged before Maharashtra Administrative Tribunal vide Original Application No.154-A/1997. The Maharashtra Administrative Tribunal has passed the detail order and dismissed the Application preferred by the petitioner. While disposing of the said Application the Maharashtra Administrative Tribunal has also taken note of the conduct of the petitioner as to attempts he has made to protract the proceedings by filing various applications and successfully stalled the proceedings for about ten years. The grievance which is made in the present petition as

regards not making available certain documents was also considered by the Maharashtra Administrative Tribunal.

12] The judgment and order passed by the Maharashtra Administrative Tribunal in Original Application No.154-A/1997 dated 26/6/1997 was challenged before this Court vide Writ Petition No.7479/2004. The Division Bench of this Court vide judgment and order dated 2/8/2005 dismissed said petition. In said Writ Petition the petitioner has made similar grievance that the copies of certain documents as he claimed in support of his defense were not made available to him during the course of disciplinary proceedings. The said grievance was duly considered and dismissed by Division Bench of this Court in its judgment dated 2/8/2005. The Division Bench has discussed the said contentions of the petitioner in para 6,7 and 8 of the judgment, which reads as under :

“6] The petitioner annexed voluminous documents to this petition and since the petitioner is appearing in person this Court give the petitioner a patient hearing and permitted him to take us through the material documents and advance his case. A perusal of the enquiry report and the documents annexed to the petition shows that since the commencement of the enquiry in 1977 the petitioner failed to attend departmental enquiry for some reason or the other. That in the written statement furnished by the petitioner on 15.12.1979 the petitioner denied the allegations made against him as false, bogus and imaginery. The petitioner also made a grievance that the copies of certain documents relating to the case were not supplied to him. He therefore, tried to point out to the enquiry officer that he was not able to effectively defend the case in the absence of documents. A perusal of the record

shows that the enquiry officer asked the petitioner to remain present on 5.10.1980. That instead of remaining present for inspection of documents, the petitioner wrote to the enquiry officer asking him to reply to the petitioner's earlier application and also demanded a fresh charge-sheet. The petitioner was again called on 26.12.1980 but the petitioner refused to attend and reiterated his demand for a fresh charge-sheet. At this point it is necessary to point out that this demand of a fresh charge-sheet was also made by the petitioner by seeking a direction to the Government in a Writ Petition to which we have already referred to here-in-above but this Court was however, not pleased to grant the relief. The petitioner was thereafter asked to attend the office of the enquiry officer on 14.05.1980 but the petitioner by his written communication candidly informed the respondent that he had decided not to remain present before the enquiry officer. The record revealed that as the petitioner was not paying any heed to the communication issued by the enquiry officer, the enquiry officer made several requests to the Government from 1980 that the matter be entrusted to the Special Officer, Departmental enquiries for departmental enquiry as a matter is complicated one. That ultimately by an order dated 4/4/86 the Government appointed Special officer Aurangabad as enquiry officer in the case, which appointment was also challenged by the petitioner before the High Court of which a reference is already made here-in-above. That since the end of 1986 and also on 5.1.1987 the petitioner was called for inspection of record but the petitioner flatly informed the enquiry officer that he was busy before the High Court on 5.1.1987. The case was thereafter adjourned to 16.1.1987 and 11.12.1987 for perusal of record and submitting list of witnesses. It was pointed out by the enquiry officer to the petitioner that if he fails to remain present on 11.2.1987, an ex-parte enquiry would be proceeded against him. The petitioner again reiterated that he was unable to attend the enquiry for number of reasons. The last reason stated in his application being that his wife was suffering from cancer. That in the interest of

justice further time was given to the petitioner up to 27/2/1987. That instead of attending the enquiry the petitioner asked for document which did not pertain to the enquiry such as list of Assistant Electrical Inspectors who were diploma holders and who carried high tension operation during the relevant time. That though the petitioner continuously chose to remain absent, documents were sent to him and he was informed that the enquiry would be conducted. That though several chances were thereafter afforded to the petitioner to remain present, he chose to remain absent for various flimsy reasons spelt out in his communication dated 12/02/1987 and 3/4/1987. It is pertinent to point out that in these communications the petitioner did not state that he would not remain present in the departmental enquiry due to his wife's illness. The departmental enquiry therefore, proceeded in the absence of the petitioner. The departmental witnesses were examined in April-1987. The evidence revealed that the petitioner had conducted 160 high tension and MP installation inspection during a day when only 3 to 5 detailed quality inspection could be conducted in a day. The evidence of witnesses also revealed that when the factory owners had lodged complaints with the department against the harassment by the petitioner, who has no jurisdiction to inspect their unit, the petitioner filed Civil Suit against one of them and claimed damages to the tune of Rs. 50,000/-. The suit was dismissed. The enquiry officer was pleased to record the finding that the charge of demanding illegal gratification was proved against the petitioner. It was also held that the petitioner carried out 179 inspections in a day which was far above the prescribed standard and therefore, it could be said that he just visited the factories and did not inspect them in the true sense. The enquiry officer also held that the petitioner ought to have sought permission or atleast disclosed to the department about the filing of suit against the consumer but he did not do so. It was therefore, held that the petitioner committed acts which were unbecoming of a government servant. All the

charges against the petitioner were held proved.

7] On perusal of documents and the impugned order of the Maharashtra Administrative Tribunal we are of the view that the petitioner was afforded a fair and reasonable opportunity to defend his case but however, the petitioner instead of availing the opportunity had been continuously indulging in litigation not only against the Government but also against the consumers who had lodged complaint against him with the department for his action which allegedly lacked jurisdiction. The petitioner had raised numerous objections regarding the conduct of the enquiry which appeared to be baseless and raised only with the view to protract the enquiry instead of defending the charges levelled against him. The Maharashtra Administrative Tribunal had after discussing the case law referred in the matter on both sides rightly held that the petitioner was afforded a reasonable opportunity of being heard, that the principles of natural justice were followed and the non supply of enquiry report before issuance of order of removal on 23.1.1999 had not caused any prejudice to the petitioner as it could not have made any difference to the ultimate finding and punishment so as to vitiate the entire enquiry. The Maharashtra Administrative Tribunal also observed that the witnesses were examined in April-1987 and the petitioner supplied the certificate relating to his wife's ailment which pertained to the month of May-1987. The Tribunal further observed that Writ Petition No. 120/91 seeking direction to the respondent to issue copy of document was dismissed and hence there was an additional ground to hold that the petitioner was not prejudiced by non supply of enquiry report prior to the order of removal. The Tribunal further held that there was nothing in the compromise terms dated 1.10.1981 to hold that the Government had dropped the enquiry against the petitioner. The Tribunal also discussed the cases cited on behalf of the petitioner as well as the respondent to hold that in the present case no prejudice had been established by the petitioner due to the absence of providing the enquiry report to the

petitioner before the order of removal. The Tribunal was further of the opinion that the order of removal of the petitioner from service was not tainted by malafide, arbitrariness and also did not violate the principles of natural justice.

8] Having already held that the petitioner had not been denied opportunity of fair trial and hearing and the scope of judicial review being limited, we have no hesitation to hold that the Judgment/Order passed by the Maharashtra Administrative Tribunal is perfectly justified and calls for no interference in exercise of the extra ordinary writ jurisdiction under Article 226 of the Constitution of India.

13] It is pertinent to note that after dismissal of the Writ Petition No.7479/2004, the petitioner has moved this Court by way of Review Application No.10221/2005, which has been decided by this Court on 18/9/2007. The Court has passed detail order and rejected the Review Application. After rejection of the Review Application, petitioner approached the Apex Court by way of Special Leave Petition No.(S) 23553/2010 as against the judgment and order dated 2/8/2005 passed in Writ Petition No.7479/2004 and order dated 18/9/2007 passed in Review Application No.10221/2005. After hearing the counsel for petitioner, the Apex Court has passed following order :

“Upon hearing the counsel the Court made the following

### **ORDER**

Learned counsel for the petitioner prays that special leave petition be dismissed as withdrawn.

Order accordingly.

A copy of this order be sent to the Registrar of Aurangabad Bench, Bombay High Court before which this matter is pending.”

14] Thus, if we consider the chequered history of the case then it can be safely stated that the order of removal from service passed in disciplinary proceeding against the petitioner has been confirmed not only by Maharashtra Administrative Tribunal but the same has also been confirmed by this Court as well as the Apex Court. Therefore, the legality and correctness of the order of removal passed by disciplinary authority cannot be agitated again and again by the petitioner. The contentions raised in the present petition as to non supply of certain copies of the documents was duly considered in the earlier proceedings filed by the petitioner as against order of removal from service. Therefore, petitioner cannot agitate the same grievance by filing petitions one after another raising the same grievance. It is apparent from the observations made in order dated 17/10/2011 passed by Division Bench of this court while disposing of the Writ Petition Nos.4941/11, 5879/11, 6370/11 alongwith Civil Applications and Review Applications taken out in Writ Petition No.7479/2004 that the petitioner has continued to file various proceedings agitating same grievance. The grievance which is sought to be agitated in the present petition was also raised in those petitions. After considering the same grievance, the Division Bench of this Court has dismissed those Petitions vide order dated 17/10/2011. In this context, it is useful to refer some of the observations recorded by the Court in para 8 to 11 of the judgment, which read as under :

“8] In these Petitions, the PartyinPerson raises issue in respect of supply of copies/documents, relevant information as per the provisions of the Right to Information Act, 2005. The PartyinPerson further prays to refund 1/3<sup>rd</sup> amount of pension, awarding of cost as per provisions of Section 20 of the Right to Information Act, 2005. The PartyinPerson has also prayed for declaration that punishment of removal imposed on 23<sup>rd</sup> January, 1991 on the Petitioner was not in accordance with the recommendations of the Enquiry Officer dated 15<sup>th</sup> May, 1987.

9] Detail affidavit in reply is placed on record by the State through Mr. Dinesh Vasudeo Dalvi, Under Secretary to the Government of Maharashtra, Public Works Department, Mantralaya, Mumbai, in the proceedings of Writ Petition No. 4941 of 2011. We have perused the material placed before us including the reply filed on behalf of the State and considered the oral submissions advanced before us. In respect of the relief sought under the provisions of Right to Information Act, 2005, the Party in Person has alternate efficacious statutory remedy. The issues relating to enquiry held against the Party in Person and consequent order thereof, have already been addressed in the earlier concluded proceedings of Writ Petition No.7479 of 2004 and Review Application No.10221 of 2005. In the facts of the case and the stand adopted by the Respondent State, we are of the view that these issues cannot be reagitated again and again under different form, proceedings.

10] Considering the record placed before us and the reply filed by the State, we are of the view that the parties have raised questions of facts. Consideration of the issues raised by the PartyinPerson, in the facts of the case, would

amount to reappreciating the facts of the case, which exercise was done at the initial stages.

11] After considering the reply filed by the State and the perusal of the earlier proceedings and the orders passed therein, we are not inclined to invoke our extra ordinary writ jurisdiction”

15] Perusal of the order dated 17/10/2011 exposes the tendency of the petitioner who is appearing in person to file petitions one after another raising the same grievance though the issue in respect of his removal from service has been finally concluded by this Court as well as Apex Court. This tendency of the petitioner is nothing but gross abuse of process of law. After disposal of aforesaid Writ Petition Nos.4991/11 and 5879/11 alongwith various applications taken out therein vide order dated 17/10/2011 the petitioner has again approached this court by way of Writ Petition No.1272/12, making grievance that certain representations made by him on 28/10/2011 and 14/7/2011 to respondent no.1 were not decided and also claimed compensation of Rs.five lakh. The Division Bench of this Court vide order dated 2/5/2012 disposed of Writ Petition with direction to respondent no.1 to decide the representation dated 28/10/2011 and 14/7/2011. Before filing Writ Petition No.1272/12 it appears that petitioner has filed few more petitions before this Court which were also disposed of by this Court. Thereafter, the petitioner has filed another Writ Petition No.257/2013 making same grievance which was already considered by this court as well as Maharashtra Administrative Tribunal. In said Petition, petitioner has claimed following reliefs :

“ (A) To set aside the decision of the Respondent No. 1 dated 28.11.2011 in deciding the representation dated 14/07/2011 (Exh. I)

(B) To decide the representations dated 14/07/2012, 17/01/2012, 23/10/2012 and 27/10/2012 as early as possible and reduce the punishment from removal to reversion and grant all consequential reliefs such as pensioner benefits, annual increments by treating the Petitioner as if he was in service.

(C) To draw, an adverse inference against the Respondent No.1 as per provisions of section 115 of Evidence Act for failure of Government in providing copies of relied documents and documentary evidence in support of enhancement of punishment from reversion to removal etc.

(D) To order the Respondent No.1 to sanction Rs. 5 Lakhs as per application dt. 29/01/12 ( Exh. D ) Dt. 29/11/12 as early as possible as advance pending decision of the representations dt. 14/07/2012, 17/01/2012, 23/10/2012 and 27/10/2012 ( out of 27 Lakhs reduced / recovered illegally from pension of the Petitioner because of removal of the petitioner by the Respondent No. 1.

(E) To direct the Respondent No. 1 not to reduce amount of pension hereafter and to pay as early as possible the petitioner entire amount of pension reduced/recovered from 1991 because of enhanced punishment of removal.”

16] Pursuant to the directions given by this Court in Writ Petition No.257/2013 respondent no.1 Secretary, P.W.D. Formed two committees of high ranking officials to trace the documents. The committee at Mantralaya level was headed by Joint Secretary (Services), P.W.D. Another committee at field level was headed by

Chief Engineer (Electrical), Mumbai to trace the documents. Those committees made efforts to trace the old record and produced the same before the Secretary, P.W.D. The details of various record traced and placed for the consideration of the Secretary, P.W.D. has been referred in para 2 of the order dated 26/11/2014 passed and communicated by Secretary, P.W.D. to the petitioner in compliance of order dated 21/8/2013 passed by Writ Petition No.257/13. It also appears that the copies of inspection note running in to 1063 pages has been furnished to petitioner vide communication dated 21/6/2014 in compliance of order passed in Writ Petition No.257/13. As such the order passed in Writ Petition No.257/2013 has been duly complied by respondent no.1.

17] Pursuant to order passed in Writ Petition No.257/13 to consider and decide representation of the petitioner as to his grievance in respect of punishment awarded and to consider his request for reversion to lower post than the order of removal passed, the Secretary, P.W.D. has passed speaking order and communicated the same vide communication dated 26/11/2014. The order passed in the matter on the part of respondent no.1 clearly reflects that the order has been passed on due consideration of the representations made by the petitioner. The respondent no.1 has passed the order in detail recording the reasons for rejecting the request of petitioner for reconsideration of his case and also altering the punishment from removal to reversion. In our view once the issue in respect of punishment has been concluded and order passed by the Disciplinary Authority confirmed by this Court as well as by Maharashtra Administrative Tribunal and the Special Leave Petition filed by petitioner against

the order passed by this Court was withdrawn and disposed of as dismissed, the petitioner cannot agitate same issue again and again by filing fresh proceedings. It appears from record that though the petitioner has been awarded penalty of removal from service still petitioner has been awarded certain amount of pension.

18] In view of the fact that respondent no.1 has complied the order passed by this Court and passed detail order on the representation made by petitioner, no question of taking any action of contempt or drawing any adverse inference against the respondent no.1 any more survives for consideration of this Court. Since the departmental enquiry proceeded against petitioner has been concluded and the decision arrived therein confirmed by administrative tribunal as well as this Court and the Apex Court no question for considering any case of prejudice for non supply of the documents can be entertained by this Court or any other Court of law. Judicial discipline requires that this Court should not entertain such petitions which amounts to reopen of issues which have been concluded by earlier decisions of this Court in the matter between same parties.

19] The petitioner has argued that the order of removal from service passed by Disciplinary Authority is not sustainable in law for the reason that the enquiry officer has recommended the punishment of reversion from the post lower than the post held by the petitioner. However the disciplinary authority has passed the order of removal from service without recording any reasons of its disagreement with the recommendation of the enquiry officer and

providing opportunity of hearing to petitioner. In this context petitioner has invited our attention to judgment of Apex Court in the case of **Yoginath Bagade V/s State of Maharashtra reported in AIR 1999 S.C. 3734**. In our view, this contention of the petitioner cannot be accepted for the sole reason that the disciplinary proceeding against the petitioner has been concluded long back and the order passed in the matter has been confirmed not only by this Court but the same has also been confirmed by Apex Court. Therefore, the issue in respect of correctness of the order passed by the disciplinary authority in disciplinary proceeding cannot be called in question by filing petitions one after another. Apart from this, the say and submission made by petitioner in this regard appears to be made without considering the facts of the case cited and under misconception of law. At the outset, the enquiry officer cannot make any recommendation as to punishment. The enquiry officer has to enquire into the charges and on conclusion of enquiry, he has to record his finding as to each of the charge and submit report of inquiry to the disciplinary authority. The imposition of the punishment solely lies within the domain of disciplinary authority. Therefore, even if the enquiry officer has made any recommendation/suggestion as to punishment still it is of no use. We have already referred in foregoing paras the reasons recorded by the Secretary, P.W.D. in recommending the penalty of removal from service. In the present case, facts involved are altogether different than the case cited. In the case cited, the enquiry officer has recorded the reasons and findings whereby exonerated the delinquent from the charges framed against him. However, the disciplinary authority has disagree with those reasons and findings recorded by the enquiry

officer and recorded its own reasons and findings of guilt on those charges and awarded penalty without affording opportunity of hearing to delinquent in respect of those findings. In the light of peculiar facts of the case, the Apex Court has set aside the order of Disciplinary Authority. Therefore, decision in the case of **Yoginath Bagade** (supra) is not applicable in the facts and circumstances of present case.

20] Alongwith letter dated 15/1/2015, the petitioner has forwarded copies of some citations to Registrar (Judicial) Bench at Aurangabad with a request to place the same before the Court. We have carefully gone through those citations. The petitioner has placed reliance on the decision of Apex Court in the case of **Union of India and others V/s Mohd.Ramzan Khan reported in AIR 1991 S.C. 471** in support of his contention that furnishing copy of enquiry report and obtaining the say of the petitioner is mandatory before awarding the punishment by the disciplinary authority. We have already discussed in foregoing paras that all such contentions were raised in earlier proceedings wherein the petitioner has challenged order passed by disciplinary authority. In view of the issue being decided by this Court in the earlier proceedings, the same need not be again and again considered by this Court. Petitioner has further placed reliance on Full Bench decision of this Court in the case of **Anil Amrut Atre V/s District and Sessions Judge, Aurangabad reported in 2002 (3) M.L.J. 750**. In the said case, the question which was posed for consideration of the Full Bench was to consider the scope of expression “considered” used in Rule 23(2) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. After considering the scope

and ambit of the word “considered” in said provision, this Court has ruled that while deciding the appeal on administrative side by the appellate authority against the order passed by disciplinary authority, it is mandatory for the appellate authority to give personal hearing and record reasons in support of its decision in appeal. This ruling as relied by the petitioner have no bearing upon the facts of the present case. The order passed by disciplinary authority has been challenged before the Maharashtra Administrative Tribunal. After affording opportunity of hearing to petitioner, the Tribunal has passed speaking and reasoned order. The order passed by the Tribunal was assailed before this Court by the petitioner. The Division Bench of this Court after giving fulfledged hearing to petitioner pleased to dismiss the petition. Thereafter, petitioner filed Review Application, which was also dismissed. Thereafter the petitioner has filed Special Leave Petition which was withdrawn. Subsequent thereto, the petitioner has filed various petitions raising same issues which were considered and decided by this Court. Hence, decision of the Full Bench in the case of **Anil Amrut Atre** has no bearing upon the facts of the present case.

21] Petitioner has further relied upon the decision of the Apex Court in the case of **Ishwar Bhai C. Patel @ Bachu Bhai Patel V/s Harihar Behera and another reported in AIR 1999 S.C. 1341** with contention to draw adverse inference against respondent no.1 i.e. the Secretary, Public Works Department, State of Maharashtra. We have carefully gone through the ruling relied by the petitioner. In our view, the decision in the said case has no bearing upon the facts of the present case. The facts in the case

cited, the Apex Court on consideration of the fact that in a Suit filed for recovery defendant no.1 did not enter into the witness box to deny the specific case of plaintiff, the Apex Court has held that under the facts and circumstances of the case and evidence on record, adverse inference can be drawn against defendant no.1 as contemplated under Section 114 (g) of Indian Evidence Act. In view of this, the ruling relied by the petitioner has no bearing upon the facts of the present case. On same line, the petitioner has placed reliance upon decision reported in **1982 Cr.L.J. 2289 (H.P.) in the case of Jagan Nath V/s State of H.P.** In our view, the decision in said case have no applicability to case in hand.

22] The petitioner has further relied upon the ruling reported in **AIR 1984 S.C. 1805 in the case of Rajinder Kumar Kindra V/s Delhi Administration through Secretary (Labour) and others.** We have carefully gone through the ruling relied. In the case cited, the Apex Court after assessing the evidence on record reached to the conclusion that the findings of misconduct recorded in disciplinary proceedings are based upon no evidence. In view of the conclusion to which the Apex Court has arrived, the order of dismissal was set aside. Since in the present case, order passed by disciplinary authority being already considered in the earlier proceedings filed before this Court and this Court has upheld the order passed by disciplinary authority, there is no question of reconsidering the case by this Court on the basis of successive petitions filed by the petitioner. Since the decision in the case relied being purely based upon the facts involved before the Apex Court, it has no applicability to the facts of the present case.

23] In the light of discussion made in the foregoing para, we are of the considered opinion that there is absolutely no merit in the petitions as well as the contempt applications taken out therein. The petitions as well as Civil Applications filed by the petitioner are devoid of merit and substance and nothing but gross abuse of process of law on the part of the petitioner. We are therefore not inclined to admit the same.

24] Although the respondents have prayed for awarding exemplary costs in the matter, we are not inclined to grant that request looking to age of the petitioner.

25] In the result, we dismiss both the Petitions together with Civil Applications as well as Contempt Petitions with no order as to costs.

**V.L.ACHLIYA,J.**

**S.V.GANGAPURWALA,J.**

umg/