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

WRIT PETITION NO. 8587 OF 2015

Bhausahab Balkrishna Ghare,
Age : 49 years, Occ : Nil,
R/o Shahapur, Post Jawalke,
Taluka Kopargaon,
District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
- 2 Zilla Parishad, Ahmednagar.
Through it's Chief Officer.
- 3 The Divisional Commissioner,
Nashik Region, Nashik.

...RESPONDENTS

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Advocate for Petitioner : Shri V.C.Patil h/f Shri Vikhe Patil Prabhakar B.
AGP for Respondents Nos.1 and 2 : Shri S.G. Sangle.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th September, 2015

Oral Judgment:

- 1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is aggrieved by the order dated 04.04.2014 passed by the Chief Executive Officer, Zilla Parishad, Ahmednagar (Respondent No.2 herein) and the order dated 13.02.2015 passed by the Additional Divisional Commissioner, Nashik (Respondent No.3 herein) by which Appeal No.22/2014 filed by the Petitioner has been rejected.

3 The contentions of the Petitioner can be summarized as follows:-

- (a) The Petitioner was appointed as a Gram-Sevak in Panchayat Samiti, Ahmednagar on 01.07.1991.
- (b) In 1993, he was transferred to Panchayat Samiti, Sangamner.
- (c) On 31.05.2011, he was transferred to Panchayat Samiti, Akole.
- (d) The charges with reference to which the Petitioner has been held guilty and punished, pertain to his tenure as Gram-Sevak in Chincholi Gurav Gram Panchayat in taluka Sangamner.
- (e) He had worked as Gram-Sevak in the year 2006-2007 in Pimpalgaon Deva Gram Panchayat.
- (f) By charge sheet dated 03.06.2011, the Petitioner was charged of having committed 07 misconducts out of which, charge Nos.3, 4, 6 and 7 pertain to financial irregularities/

misappropriations.

- (g) No reply was filed by the Petitioner to the charge sheet-cum-show cause notice dated 03.06.2011.
- (h) The Respondent/ Establishment initiated an enquiry into the charges levelled upon the Petitioner.
- (i) The final show cause notice dated 16.07.2012 along with the copy of the enquiry officer's report was served upon the Petitioner.
- (j) The Petitioner submitted a detailed reply dated 13.08.2012 and denied each of the charges after conclusion of the enquiry.
- (k) On 04.09.2013, the Bock Development Officer, Sangamner submitted his report to the Deputy Chief Executive Officer, Zilla Parishad, Ahmednagar.
- (l) By order dated 04.04.2014, Respondent No.2/ CEO has imposed the punishment of compulsory retirement on the Petitioner as well as has imposed the fine of Rs.25,000/- in accordance with the Rules applicable.
- (m) The Petitioner preferred Appeal No.22/2014 before the Additional Divisional Commissioner (Respondent No.3) which was dismissed by the order dated 13.02.2015.

4 The learned Advocate for the Petitioner has strenuously submitted that no opportunity of defence was given to the Petitioner in the enquiry and there was no fair hearing in the enquiry.

5 He submits that one of the charge was with regard to withdrawing an amount of Rs.53,400/- by forgery. While denying the said charge, he submits that the allegation was that the Petitioner had signed by proxy for the Sarpanch and had withdrawn the amount. The Sarpanch had not lodged any complaint in this context. The Sarpanch was not examined and a report was not called for from the Bank as to whether, the Sarpanch had himself signed or whether, it was an act of forgery.

6 The learned Advocate has further submitted that a detailed reply dated 13.08.2012 was filed in response to the final show cause notice proposing the punishment. While denying each of the charges, the Petitioner has specifically dealt with every charge and has impressed upon the Establishment that none of the charges levelled upon him are proved. He submits that his explanation which runs into six pages, is a clear pointer of his innocence.

7 He submits that the Petitioner was made to believe that if he does not cross-examine the witnesses presented by the Establishment, the

enquiry could be concluded within a short time and he would be benefited by the same. It is, therefore, submitted that no cross-examination of the witnesses of the Establishment was resorted to by the Petitioner believing the words of the Enquiry Officer that he was likely to be exonerated.

8 The learned Advocate has also pointed out the report submitted by the Deputy Chief Executive Officer by which leniency could be shown towards the Petitioner. He points out that the first charge was partly proved. The second charge was not proved as the explanation of the Petitioner was accepted. With regard to the third charge of delayed payment to the beneficiaries (69 in number), who are below poverty line, the charge proved was only to the extent of causing delay in allotting the funds to these 69 persons. The fourth charge regarding not disbursing the payment to 53 labourers despite having worked, the explanation of the Petitioner was accepted. Insofar as the last two charges of misappropriation are concerned, though the Petitioner has properly explained his conduct and his non involvement in any of the financial irregularities/ misappropriations, he has been held guilty of the charges. He further adds that the charge of withdrawing Rs.53,400/- was partly proved and the explanation of the Petitioner was partly accepted.

9 The learned Advocate for the Petitioner has taken me through

the impugned orders as well as the enquiry officer's report. Respondent No.2 has passed a detailed order whereby, he has considered the explanation of the Petitioner and has analyzed the same with reference to the conclusions drawn by the Enquiry Officer. The grievance is that the competent authority as well as the appellate authority has not properly considered the explanation of the Petitioner. It is, therefore, prayed that the impugned orders be quashed and set aside and the Petitioner be reinstated in service.

10 The learned AGP has supported the impugned judgment.

11 I have considered the submissions of the learned Advocates as recorded herein above and with their assistance, have gone through the charge sheet, enquiry officer's report, the Petitioner's explanation to the final show cause notice, the report of the Deputy Chief Executive Officer and two impugned orders.

12 It cannot be overlooked that the Petitioner has not submitted any reply to the charge sheet dated 03.06.2011. That was the first available opportunity to the Petitioner to explain his side while denying the charges levelled upon him and thereby, attempt to convince the Establishment that he was not guilty of any of the charges levelled upon

him. There is no explanation put forth in the petition as to why did the Petitioner choose to accept the charge sheet and not submit any reply much less deny the charges levelled upon him.

13 It also cannot be overlooked that when the Petitioner had an opportunity of cross-examining the Establishment's witnesses, confront the documents and lead evidence in support of his case, he has chosen to do neither. Neither did he submit an explanation even in the enquiry nor has he cross-examined the Establishment's witnesses. He has not led any evidence in support of his case. In short, it appears that there was no defence put forth by the Petitioner before the Enquiry Officer.

14 I am unable to agree with the strenuous submissions of the learned Advocate that the Petitioner was made to believe and was misguided by the Enquiry Officer that if he keeps silent and does not cross-examine the Establishment's witnesses, he would be exonerated. The Petitioner is an educated person. He is Gram-Sevak since 1991. He had put in 20 years till the issuance of the charge sheet. I am unable to be persuaded that he could be said to be a simpleton so as to be unaware of his rights and the proceedings being conducted against him.

15 After the Enquiry Officer submitted his report holding the

Petitioner guilty of the charges levelled upon him, that the Petitioner has submitted a detailed reply and for the first time, has put forth his case of not being guilty of any of the charges levelled upon him. In these peculiar facts and circumstances, the statement of the Petitioner could only be said to be an afterthought. It is undisclosed as to what were the circumstances that prevented the Petitioner from denying the charges and putting forth a proper explanation after having received the charge sheet cum show cause notice.

16 The Petitioner has relied upon the judgment of the Division Bench of this Court dated 02.09.2015 delivered in Writ Petition No.366/2004 (*Bhausahab Macchindra Wardule v/s The Additional Commissioner, Aurangabad*), to contend that the Petitioner in the said case was also a Gram-Sevak as like the Petitioner herein. His case stood on similar set of facts and this Court, therefore, directed stoppage of two annual grade increments and set aside the order of punishment. It was, therefore, prayed that this Court should follow the said ratio laid down in Bhausahab Wardule's case (*supra*).

17 In paragraph 3 of the judgment in the case of Bhausahab Wardule (*supra*), the Division Bench has specifically come to the conclusion that no allegations of misappropriation of funds were either

made or proved against the Petitioner. The charges levelled upon him did not involve moral turpitude. The misconduct did not incur monetary loss to the Employer. Paragraph 3 of the said judgment reads as under:-

“3. The petitioner then approached the appellate authority viz. the Additional Commissioner, who upon hearing the submissions on appeal, partly allowed the appeal. The said authority set aside the impugned order directing the respondent No.2 that the suspension to be treated as suspension, however, he did not disturb the stoppage of two annual grade increments permanently. The question that comes before us is whether the punishment is disproportionate to the charges proved. We find that out of 7 charges only two charges were proved. No allegations of misappropriation of funds were made and proved. The charges do not involve moral turpitude. The misconduct did not incur monetary loss to the employer. As against this, due to permanent stoppage of 2 annual grade increments, petitioner would suffer during his entire career and even at the time of his retirement and for pensionary benefits. The loss that the petitioner would suffer due to the punishment, appears to us, disproportionate to the nature of charges which were proved.”

18 In the instant case, the Petitioner has himself admitted of having withdrawn funds from the account of the Gram Panchayat wherein he was the only signatory involved. This explanation has been put forth after the Enquiry Officer's report was served upon him. The said account number is 3772 which contained Rs.1 lac. According to the Petitioner, he withdrew Rs.46,000/- and deposited it in another account No.5361. Similarly, by his own signature, he has withdrawn Rs.7,400/- purportedly

for paying electricity charges. It cannot be appreciated that the Petitioner, who is Gram-Sevak, could resort to these acts without any resolution being passed or prior permission being taken from the competent authority or the Gram Panchayat.

19 The contentions of the Petitioner, post the conclusion of the enquiry and that too after not filing any reply to the charge sheet, failing to cross-examine the Establishment's witnesses and failing to lead evidence on his behalf, do not deserve any consideration.

20 The Apex Court in the case of *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs. Secretary, Sahakari Nourara 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.

21 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.”*

22 The Division Bench of this Court in the case of *P.R.Shele vs. Union of India and others*, **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.”

23 In the light of the above, this Writ Petition is devoid of merit and the same is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)