

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4917 OF 2012

Yashwant Paulad Sapkale,
Age 50 years, Occ. Nil.,
R/o at and post Pimpri,
Tq. Dharangaon, Dist. Jalgaon.

..Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Rural Development Department,
Mantralaya, Mumbai.

2. The Additional Commissioner,
Nasik Division, Nashik.

3. The Chief Executive Officer,
Zilla Parishad, Jalgaon.

..Respondents

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Sr. Advocate for Petitioner : Shri Hon Vinayak D.
AGP for Respondents 1 & 2 : Shri Sangle S.G.
Advocate for Respondent 3 : Shri Chavan R.N. h/f Shri Sharma Vijay

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 05, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the order of removal from service dated 1.12.2006 passed by the respondent No.3 - Chief Executive Officer, Zilla Parishad on account of proved mis-conducts. The petitioner is also aggrieved by the judgment dated 12.8.2011, delivered by the Additional Divisional Commissioner, by which, Appeal No.40 of 2010, preferred by the petitioner has been rejected.

5. The petitioner contends that he was appointed as a Peon with the Zilla Parishad in 1986. He was issued with a charge sheet-cum- show cause notice dated 11.10.2005. He failed to submit his reply. Respondent No.3, therefore, initiated disciplinary proceedings against the petitioner. The enquiry was held on five dates, out of which, the petitioner was present only on the 2nd date of the enquiry.

6. The Enquiry Officer submitted his report dated 8.8.2006, recommending the petitioner's termination from service for proved mis-conducts. Respondent No.3, therefore, passed the impugned order on 1.12.2006. Respondent No.2 dismissed the Appeal preferred by the petitioner.

7. The petitioner submits that a major punishment has been awarded to him for having remained unauthorizedly absent for about five months. The punishment is disproportionate to the gravity and seriousness of the misconduct. The petitioner has put in about 20 years of service till the date of termination.

8. It is further submitted that the petitioner was suffering from a psychological disorder. He was required to take treatment and filing an application for seeking leave from the respondent - employer was beyond his control. The establishment is aware about his medical condition. He has not intentionally remained absent. Considering his illness, his case is required to be looked at from a different angle.

9. It is, therefore, submitted that the termination of the petitioner be quashed and set aside and the respondent be directed to reinstate him in service with continuity and full backwages. Reliance is placed upon the judgment of the Apex Court in the case of Jagdish Singh Vs. Punjab Engineering College and others [2009 (3) All India Services Law Journal 233] and in the matter of Surendra Prasad Shukla Vs. State of Jharkhand and others [2011 (3) All India Services Law Journal 471].

10. Shri Sharma, learned Advocate appearing for respondent No.3 submits that though the petitioner had put in 20 years in employment prior to his termination, he has been habitually remaining unauthorizedly absent. In the past, he has been punished for a similar misconduct by awarding a major punishment in the nature of bringing him down to the lowest scale for a period of five years.

11. He further submits that the show cause notice was initially served upon the petitioner. He failed to respond and did not file any reply. He

has not filed any reply to the charge sheet. Even in the enquiry, which was conducted on 24.4.2006, 15.5.2006, 24.5.2006, 16.6.2006 and 30.6.2006, he remained present only on 25.5.2006 and led evidence. He has not replied to the second show cause notice by which the punishment was proposed.

12. He further submits that unauthorized absence for a period of five months and above is not a minor misconduct. He has suffered a major punishment for the similar misconduct in the past. No lenience or sympathy deserves to be shown to the petitioner. He, therefore, prays for the dismissal of this petition.

13. Shri Sharma further states that as the termination of the petitioner is for unauthorized absenteeism, the misconduct does not amount to an act of moral turpitude. He may, therefore, apply under Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 for seeking compassionate pension.

14. I have considered the submissions of the learned Advocates as have been recorded above.

15. Issue is as regards the proportionality of the punishment.

16. The reliance placed upon the judgment of the Apex Court in the case of Jagdish Singh (supra), would not support the contention of the petitioner as in the said case, the petitioner had put in long service which was clean

and unblemished. The mis-conduct committed was of unauthorized absence for two months. In the instant case, the petitioner was unauthorizedly absent for five months and has already suffered a major punishment in the past for a similar misconduct.

17. The reliance placed upon the judgment in the case of Surendra Prasad (supra), is misplaced. The Apex Court has taken into account that the appellant had put in 34 years of service and was entitled for pension, which, in the view of the Apex Court was required to be protected and hence the Apex Court had converted the punishment of dismissal from service to compulsory retirement. In the instant case, the petitioner has been terminated from service and has not been dismissed. The ratio in the Surendra Prasad's case (supra), will therefore, be not applicable to this case.

18. It is trite law that an employer has to necessarily consider the past service record, while arriving at the quantum of punishment to be awarded to a delinquent. The petitioner was awarded a major punishment in the past. Beyond a major punishment, the punishment of termination or dismissal is prescribed by the Discipline and Appeal Rules. The establishment, therefore, found it fit to terminate the services of the petitioner instead of dismissing him.

19. Considering the unauthorized absence for five months, coupled with the blemished past service record, I do not find that the impugned order of

termination and the impugned order of the Additional Divisional Commissioner calls for any interference. Needless to state, since the misconduct proved against the petitioner does not involve moral turpitude, his gratuity cannot be forfeited. Hence, the petitioner shall be entitled for gratuity in accordance with Rules, if not already paid.

20. So also, if the petitioner has put in qualifying service, he may make an application to the respondent under Rule 101 of the MCS (Pension) Rules, 1982 for seeking compassionate pension.

21. With the above observations, this petition is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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