FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.6232 OF 2012
WITH
WRIT PETITION NO.4761 OF 2012

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr.A.A.Nimbalkar, advocate holding for Mr.M.P.Kale, advocate for the petitioner.
Mr.K.G.Patil, Addl. Govt. Pleaders for the State.
Mr.A.A.Nimbalkar, advocate for Respondent No.1 in W.P.No.4761/12

CORAM : S.V.GANGAPURWALA &
V.L.ACHLIYA,JJ.
Date : 20.01.2015.

PER COURT :

1. Heard.

2. The petitioner in W.P.No.6232/2012 had filed Original Application bearing No.1232/2009 against the punishment imposed upon the petitioner i.e. deduction of 25% amount from the regular pension, after the appeal filed by the petitioner is dismissed. The Tribunal partly allowed the Original Application, reduced the punishment of deduction of 25% amount from regular pension to deduction of 15% pension amount from the regular pension. The Tribunal also exonerated the petitioner employee from one of the charge. The State as well as the employee have assailed the said

order of the Tribunal in the present Writ Petition.

3. Mr.Nimbalkar, learned counsel for the petitioner in W.P.No.6232/2012 states that the Tribunal committed an error while holding the petitioner guilty of one of the charge. According to the learned counsel, the charge No.1 is also not proved i.e. in case of matter involving M/s Dharmatma Electronics. The learned counsel submits that No Objection Certificate was issued by the Assistant Sales Tax Commissioner and to avoid delay that may be caused for the report from the Ward Office, the steps were taken in accordance with the No Objection Certificate which was issued by the higher authority i.e. the Assistant Sales Tax Commissioner. Similar course was followed in other matters, such as Hotel Shalimar etc. The Registration Officer also granted Registration Certificate after verifying the purchases. The same were relied by the petitioner employee. The Deputy Commissioner of Sales Tax had condoned the delay in the matter and not the petitioner. The petitioner by no stretch could have been held responsible. The Tribunal failed to consider the said fact.

4. The learned counsel in alternate submits that having been exonerated from one of the charge, imposing punishment of deduction of 15% amount from regular pension is disproportionate. In fact, no loss has been caused to the Department on account of the petitioner. As such punishment imposed of the amount of 15%

from regular pension is too disproportionate.

5. Mr.Patil, learned Addl. Govt. Pleader submits that the Tribunal could not have exonerated the employee from charge No.2 i.e. in case of M/s Jyoti Cottage Industries. The employee/delinquent did not issue notice to the assessee for reassessment in a proper form and said notice was without disclosing any reasons. According to the learned Addl. Govt. Pleader, the Tribunal has erroneously appreciated the facts. The punishment imposed by the Department of deduction of 25% amount from the regular pension was absolutely correct.

6. We have considered the submissions canvassed by the learned counsel for respective parties. In fact, the employee/delinquent is discharged of charge No.2 by the Inquiry Officer and upheld by the Tribunal also. No loss has been occasioned to the Department on account of the act as contemplated vide charge No.2. Even the appeal filed by the business concern in the District Court against the recovery is dismissed. The Tribunal has properly appreciated the said aspect of the matter.

7. As far as charge No.1 is concerned, the Inquiry Officer as well as the Tribunal has considered the totality of the circumstances and the evidence on record and had arrived at a plausible conclusion. As such when a plausible view has been taken, it would not be possible to interfere in the Writ jurisdiction.

8. As far as proportionality of the punishment is concerned, it is trite that Wednesbury's principle of reasonableness has been substituted by principle of proportionality. This Court would not sit in appeal over the punishment awarded unless the same is shockingly disproportionate.

9. Having held one charge proved and the petitioner employee being exonerated from another charge, the Tribunal has proportionately reduced the punishment from deduction of 25% amount from regular pension to deduction of 15% amount from the regular pension. The same is reasonable and does not require any interference.

10. In light of the above, both the Writ Petition, filed by the State as well as the employee stand dismissed.

11. In case the State has recovered amount at the rate of deduction of 25% amount from the regular pension, the State shall refund the same to the Petitioner employee and shall calculate the deduction only at the rate of 15% amount from the regular pension. No costs.

(V.L.ACHLIYA,J.) **(S.V.GANGAPURWALA,J.)**

Dt..20.01.2015.
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