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

WRIT PETITION NO. 568 OF 2014

Arjun Kashinath Badade,
Age : 44 years, Occupation : Nil,
R/o Bidkin, Tq.Paithan,
District : Aurangabad.

..PETITIONER

-VERSUS-

- 1 Director General,
Water & Land Management
Institute (Walmi), Paithan Road,
Aurangabad.
- 2 Secretary & President,
Water and Land Management Institute
(Walmi), Paithan Road,
Aurangabad.

..RESPONDENTS

....

Mr.Muley Rajaram B., Advocate for the Petitioner.

Mr.Mr.R.L.Chintalwar, Advocate for the Respondents.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th July, 2015

Oral Judgment:

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

2 The Petitioner seeks to challenge the judgment delivered by the Labour Court dated 30.11.2011 in Complaint (ULP) No.81/2004 and the judgment of the Industrial Court dated 02.05.2013 delivered in Revision (ULP) No.70/2011.

3 Shri Muley, learned Advocate for the Petitioner, has narrated the details of the case as follows:-

- (a) The Petitioner/Employee joined the Respondents/ Employer as “Chowkidar” in 1984 and was subsequently granted permanency and benefits incidental thereto.
- (b) On 14.07.2004, he received the charge sheet and was called upon to submit his explanation to the said charge sheet.
- (c) By communication dated 19.07.2004 the Petitioner submitted his reply to the show cause notice dated 14.07.2004.
- (d) He has stated that his wife is ill and being the only adult person in the family, he is required to attend to her medical treatment and therefore, he has been obtaining leave.
- (e) At times, he has remained absent without leave in certain situations.
- (f) His wife suffers from Tuberculosis and she is frequently required to be taken to hospital for treatment.

- (g) The Petitioner has further stated in the reply that all charges levelled upon him in the show cause notice dated 14.07.2004 are not applicable to him and he denies the same.
- (h) He clarifies in the said reply that only because he was unable to inform the Competent Authority for remaining absent, he is charged and to that extent, he admits.
- (i) The Respondent issued the show cause notice dated 19.08.2004 under Rule 13 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (herein after referred to as the 1979 Rules) proposing the punishment of compulsory retirement.
- (j) In reply dated 21.08.2004 to the said notice dated 19.08.2004, the Advocate of the Petitioner stated that the Petitioner had never accepted the misconduct alleged against him and the punishment proposed is unacceptable to the Petitioner.
- (k) It was denied that the Petitioner does admit of being unauthorizedly absent. He had obtained leave orally on several occasions.
- (l) By an order dated 03.09.2004, the Petitioner was compulsorily retired by way of punishment purportedly on the basis that the charges levelled upon him have all been

admitted.

- (m) The Petitioner preferred Complaint (ULP) No.81/2004 before the Labour Court at Aurangabad.
- (n) By the impugned order dated 30.11.2011, the complaint was dismissed on the basis that once the Petitioner had admitted all the charges levelled upon him, the Employer was not required to conduct an enquiry.
- (o) The Petitioner preferred Revision (ULP) No.71/2011 before the Industrial Court at Aurangabad making an attempt to point out the perversity in the findings of the Labour Court.
- (p) The Industrial Court in a short judgment and cryptic order, has dismissed the revision petition by concluding that as the Revision Petitioner had admitted his guilt in clear words in his reply, there was no need to conduct a domestic enquiry.
- (q) The Petitioner is an illiterate person who works as a “Chowkidar”. When he received the charge sheet, he submitted his reply and has honestly stated that at times he has not taken permission of the competent authority while remaining absent.
- (r) However, he has categorically stated in the reply dated 19.07.2004 that the charges and clauses sought to be levelled upon the Petitioner, are not applicable to him and he denies

the same. The third paragraph on page 1 of the reply dated 19.07.2004 contains this specific statement.

- (s) The Employer has relied upon Rule 13(ii) while passing the impugned order imposing the punishment of compulsorily retirement on the Petitioner/ Employee under the 1979 Rules.
- (t) The Petitioner submits that Rule 13 of the 1979 Rules is for a different purpose and the Respondent should have passed an order under Rule 9. Therefore, Rule invoked by the Respondent indicates that the order is without any legal foundation.
- (u) The Labour Court was carried away by the sentence mentioned in his reply dated 19.07.2004 that he had not obtained leave from the competent authority. This was with regard to the charge levelled upon him.
- (v) The Petitioner has honestly admitted that he had not taken permission because of the peculiar illness of his wife and who is required to be rushed to hospital and there is no adult person in the family.
- (w) This one statement is culled out from the reply submitted by the Petitioner and that has been blown out of proportion to overwhelm the specific denial in the reply.
- (x) The judgment of the Labour Court is perverse and erroneous

and so also, the judgment of the Industrial Court.

- (y) The Employer has avoided conducting an enquiry and the same is impermissible.
- (z) Grave injustice has been done to the Petitioner since the impugned order of compulsory retirement has rendered the Petitioner without any employment.

4 Shri Chintalwar, learned Advocate for the Respondent/ Management/ Employer, has submitted as under:-

- (a) Rule 8(5) of the 1979 Rules enables the Respondent/ Management to dispense with an enquiry if an employee admits the charges levelled upon him.
- (b) The Petitioner has clearly admitted all the charges levelled upon him.
- (c) After the reply dated 19.07.2004 was received by the Respondent, it considered the clear admission given by the Petitioner and therefore, concluded that a domestic enquiry was not required to be conducted.
- (d) The Disciplinary Authority by passing the impugned order of punishment dated 03.09.2004, has drawn it's conclusion on each of the charges levelled upon the Petitioner.
- (e) Rule 8(5)(a) which contains the words “.... and *where all the*

articles of charge have been admitted by the Government Servant in his Written Statement of defence, the Disciplinary Authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 9 of these rules.” indicate that the Disciplinary Authority can dispense with an enquiry.

- (f) The words “after taking such evidence” means that no evidence is required to be recorded and the enquiry can be dispensed with.

5 Shri Chintalwar, in support of his above submissions, has relied upon the following judgments:-

- (a) *Sarv U.P. Gramin Bank v/s Manoj Kumar Sinha*, **AIR 2010 SC 2491**;
- (b) *State Bank of India v/s Hemant Kumar*, **2011(II) CLR 1**;
- (c) *Chandrakant Damodar Kale v/s Nagpur Improvement Trust*, **1997(3) Mh.L.J. 30**.

6 I have considered the submissions of the respective sides and also considered the record and proceedings which are available before me. The whole controversy turns upon as to whether, the reply given by the

Petitioner/ Employee dated 19.07.2004 could be termed to be an unequivocal acceptance of the charges levelled upon him under the clauses invoked for establishing commission of misconduct. In my view, a statement of part acceptance and part denial would not mean an unequivocal acceptance of all charges levelled upon the Employee.

7 Paragraph 2 of the reply dated 19.07.2004 indicates the extent of illness of the Petitioner's wife. The first paragraph on the second page of the reply indicates that the Petitioner is the only earning member of his family, his wife is unwell and because of the charges being levelled upon him, he has become disturbed. He further adds that the Respondent/ Management has prevented him from reporting for duties in the past citing similar reasons. The second paragraph in the reply on the second page indicates that he had prayed to the Management that he be allowed to perform his duties and he would henceforth ensure that he would not remain absent without seeking due permission.

8 The charge sheet-cum- notice dated 14.07.2004 apparently has been lost sight of by the both lower Courts. In clause 3 of the charge sheet, the Respondent has specifically informed the Petitioner that an enquiry would be conducted in connection with only those charges which he denies and no enquiry would be conducted with reference to those

charges which he may admit. It is further stated in the said paragraph that if he desires to admit the charges levelled upon him, it should be an unconditional admission meaning an unequivocal admission.

9 I find from the impugned judgments that both the Courts below have not even read this paragraph. Similarly, it appears that both sides have not adverted to this paragraph. This paragraph 3 of the charge sheet dated 14.07.2004 makes it adequately clear that if the Petitioner/Employee admits the charges, it should be an unequivocal admission. If he denies a part of the charges, the Respondent would be under an obligation to conduct a domestic enquiry with reference to only those charges which are denied. Both the Lower Courts have upheld the order of punishment purely on the ground that the Petitioner has admitted all the charges levelled upon him.

10 It is in this backdrop that the reply of the Petitioner needs to be considered. He has clearly stated that the clauses of misconduct invoked against him are not accepted by him and he denies the charges levelled upon him. In the same paragraph of his reply, he states that he has not taken prior permission of the Competent Authority while remaining absent and he admits his acts to that extent.

11 I find that the said paragraph does not amount to an unequivocal admission on the part of the Petitioner/ Employee. Nevertheless, a prudent employer should have sensed that the Petitioner though wrongly, was approbating and reprobating in the same reply. This apparently created confusion as to whether, he is accepting the charges or denying the same. The best option in the fact situation was that the Employer should have proceeded with the enquiry since there was no strong reason to dispense with an enquiry.

12 The Respondent/ Employer has relied upon Rule 8(5)(a) of the 1979 Rules. Under Part IV of the said Rules, the procedure for imposing penalties is prescribed. Rule 8 in its entirety pertains to the procedure for imposing major penalties. In relation to the case in hand, it would be apposite to reproduce Rules 8(3), 8(4) and 8(5) as under:-

- “(3) Where it is proposed to hold an inquiry against a Government servant under this rule, the disciplinary authority shall draw up or cause to be drawn up-*
- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;*
 - (ii) a statement of the imputation of misconduct or misbehaviour in support of each article of charge, which shall contain-*
 - (a) a statement of all relevant facts including any admission or confession made by the Government servant; and*
 - (b) a list of documents by which, and a list of witnesses by whom, the articles of charges are*

proposed to be sustained.

- (4) *The disciplinary authority shall deliver or cause to be delivered to the Government servant, a copy of articles of charge the statement of the imputations of misconduct or misbehaviour, and a list of documents and of the witnesses by which each article of charge is proposed to be sustained, and shall by a written notice require the Government servant to submit to it within such time as may be specified in the notice, a written statement of his defence and to state whether he desires to be heard in person.*
- (5)
 - (a) *On receipt of the written statement of defence the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary as to do, appoint, under sub-rule (2) an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 9 of these rules.*
 - (b) *If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so appoint under sub-rule (2) of these rules an inquiring authority for the purpose.*
 - (c) *Where the disciplinary authority appoints an inquiring authority it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present the case in support of the articles of charge before the inquiring authority. "*

13 The fact remains that the Petitioner had not put forth a clear admission of all charges levelled upon him which could have entitled the

Respondent/ Management to dispense with the enquiry. The phraseology of Rule 8(5)(a) is of much importance. In a given case where a Government servant in his written statement of defence may admit all articles of charges, the disciplinary authority has to record its finding on each charge after taking such evidence as it may think fit. Taking such evidence could mean either hearing the Government servant personally or by recording his statement or even by conducting an enquiry notwithstanding the articles of charges have been admitted. It is, therefore, necessary that the disciplinary authority must be fully convinced that the enquiry can be dispensed with. In this backdrop, the submission of the learned Advocate for the Respondent/ Management that the disciplinary authority need not record any evidence and may dispense with an enquiry, is an aberration.

14 Insofar as the contention of the learned Advocate for the Petitioner/ Employee that the impugned order could have been passed under Rule 8(9) of the 1979 Rules is concerned, it would be apposite to reproduce Rule 8(9) as follows:-

“(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence, or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority

shall record the plea, sign the record and obtain signature of the Government servant thereon. ”

15 In the light of the above, if a Government servant has not admitted any of the articles of charges in his written statement of defence or has not submitted any written statement of defence, he can appear before the Enquiry Officer and the Enquiry Officer can ask him, whether, he is guilty of the charges levelled upon him or as to whether, he would prefer to plead guilty or take up a defence.

16 I do not find any reason or circumstance emerging from the record that could have precluded the Respondent/ Management from resorting to this exercise under Rule 8(9) in the light of the confusing reply given by the Petitioner/ Employee. In fact, as has been rightly submitted by Shri Muley that this was the best method of confronting the Petitioner of calling upon him in the enquiry to make a statement as to whether, he desires to plead guilty or admit some of the articles or he intends to take a defence against all the articles of charges.

17 Learned Advocate for the Petitioner has then pointed out that the impugned order has been passed under Rule 13(ii) of the 1979 Rules. Rule 13 pertains to a special procedure in certain cases. For the sake of clarity, it would be apposite to reproduce Rule 13 herein below:-

“13. Special procedure in certain cases:-

Notwithstanding anything contained in rules 8 to rule 12 of these rules:-

- (i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge; or*
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or*
- (iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, or the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.*

[Provided that the Government Servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i)

Provided further that the Commission shall be consulted. Where such consultation is necessary before any orders are made in any case under this rule].

- (iv) Disciplinary proceeding come to an end immediately on the death of the delinquent Government servant. No disciplinary proceedings under these rules, can therefore, be continued after the death of the concerned Government servant. ”*

18 Sub-rule (ii) under Rule 13 provides that where the disciplinary authority is satisfied for the reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules, it may dispense with conducting of an enquiry notwithstanding Rules 8 to 12. I do not find any compelling

reason cited by the Respondent/ Management which precluded it from conducting an enquiry. The Respondent has adopted a plain and simple stand that because the Petitioner has accepted all the charges levelled upon him, no enquiry needs to be conducted.

19 Reliance placed upon the judgment in the case of Sarv UP Gramin Bank (supra) by the learned Advocate for the Respondent, is misplaced. It is a case in which non supply of enquiry report was the issue for adjudication. The question of adherence to the principles of natural justice was at issue. The judgment of the Apex Court in the case of *ECIL v/s B.Karunakar* reported in **1993 (4) SCC 727 : AIR 1994 SC 1074** was being considered.

20 The Respondent has then relied upon the judgment of the Division Bench of this Court in the case of Chandrakant Damodar Kale (supra). That was the case of suspension pending enquiry and the Enquiry Officer was appointed. It was held that breach of Rule 8(5) is procedural in character. The Board of Trustees had taken note of the charges levelled upon the delinquent and no prejudice was caused since the mere breach of rule by itself would not vitiate the enquiry.

21 In Chandrakant Damodar Kale (supra), the issue was as

regards whether, the employee had a fair and reasonable opportunity to reply to the charges, contest and participate in the enquiry. The charges levelled upon the delinquent were serious in nature. The Petitioner failed to demonstrate the prejudice caused. The Enquiry Officer had found him guilty on the basis of the evidence recorded. This Court, therefore, concluded that the provisions of the Evidence Act are not strictly applicable to the disciplinary proceedings.

22 I do not find that these judgments could be applicable in the instant case for the reason that the Employer has not conducted any enquiry at all. The Employer has eventually culled out one sentence from the reply and has concluded that the Petitioner has unequivocally accepted all the charges levelled upon him. So also, Rule 8(9) was the best option in the given situation for the Respondent to reascertain whether, the Petitioner admits all the charges or wants to set up a defence against the charges, which was not followed.

23 The Respondent has then relied upon the judgment of the Apex Court in the case of SBI v/s Hemant Kumar (supra). The employee in the said case had accepted the charges levelled upon him in two ways. Firstly, he had submitted his written reply to the charge sheet admitting his guilt. Secondly, he appeared before the Enquiry Officer and once again

made a statement before the Enquiry Officer that he was pleading guilty and admitted the charges.

24 The manner in which the said employee has accepted his guilt and had admitted the charges, can be well appreciated from paragraph 7 of the judgment of the Apex Court wherein the Apex Court has reproduced the entire text of his reply which reads as under:-

“7. *Against the order passed by the disciplinary authority, the respondent preferred an appeal and during the pendency of the appeal he submitted yet another letter admitting his guilt in writing, presumably hoping that a lenient view would be taken in the appeal. In the memo dated December 10, 1986 addressed to the Manager, State Bank of India, the respondent stated as follows:-*

*“Dear Sir,
Subject : Entry dated 26.09.1993 for Rs.14,000/-.
With reference to above, I committed a fraud by wrong crediting Rs.14,000/- on 26.09.1993 which was Sunday in SB account No.1287 of Shivani and Lt. Col. G.G.Agrawal and I was closing the wrong balancing of ledger No.10 --- months. For which I am extremely sorry and shameful. I beg you to --- for this shameful act and I promise you not to do such thing in future.”*

25 It is, thus, clear that Hemant Kumar in the above case has not only pleaded guilty, but has admitted of committing a fraud with reference to the saving bank accounts of two persons, namely, Shivani and Lt.Col.G.G.Agrawal. He has stated that he was extremely sorry for his acts

and he will never commit such shameful acts in future. This reply is indicative of the fact that the case of the Petitioner in hand cannot be equated with the said case.

26 It is trite law in the light of the judgments of the Apex Court in the matter of *Workmen of M/s Firestone Tyre & Rubber Company of India v/s Management* reported in **AIR 1973 SC 1227 : 1973 SCR (3) 587**, *Delhi Cloth and General Mills Company Limited v/s Ludh Budh Singh* reported in **1972 (1) SCC 595** and *Bharat Forge Company Ltd. v/s A.B.Zodge* reported in **1996 (73) FLR 1754 : AIR 1996 SC 1556**, that if an enquiry is not conducted or is set aside for any reason, the case of the Employer stands on the footing of “no enquiry”. Therefore, the Employer can conduct a de-novo enquiry before the Labour Court.

27 In the case of *Amar Chakravarty v/s Maruti Suzuki India* reported in **(2010) 14 SCC 471**, it is laid down that the Employer has to post a reason explaining as to why the enquiry could not be conducted.

28 In the backdrop of well settled law, this matter could have normally been remitted back to the Labour Court for enabling the Respondent to conduct a de-novo enquiry. However, I have gone through

the Written Statement of the Respondent/ Management dated 30.12.2004 signed by Shri B.K.Shrinath, Assistant Administration Officer, wherein, a right to conduct a de-novo enquiry has not been reserved by the Respondent.

29 The Apex Court (five judges Bench) in the case of *KSRTC v/s Lakshmiddevamma* reported in **2001 (2) CLR 640**, has settled the law that the Employer has to reserve a right to conduct a de-novo enquiry at the first available opportunity. It is, therefore, held that filing of a written statement is the first available opportunity wherein, such right can be reserved and if no right of this nature has been reserved in the Written Statement, it would amount to the Employer having acquiesced it's right to conduct a de-novo enquiry.

30 In the above backdrop, I am unable to remit back the complaint to the Labour Court since it is an admitted position that the Respondent/ Management has not conducted an enquiry and has not reserved it's right to conduct a de-novo enquiry before the Labour Court.

31 As such, the conclusions of the Labour Court in the impugned judgment dated 30.11.2011 in Complaint (ULP) No.81/2004 and the judgment of the Industrial Court dated 02.05.2013 in Revision (ULP)

No.70/2011 are rendered perverse and erroneous. Both the judgments are, therefore, quashed and set aside.

32 The Complaint before the Labour Court stands allowed. In the result, the impugned order of compulsory retirement by way of punishment imposed on the Petitioner/ Employee dated 03.09.2004 is quashed and set aside. The Respondent/ Management shall reinstate the Petitioner/ Employee in service with continuity.

33 Insofar as the back-wages are concerned, the Petitioner/ Employee besides being the only earning member of his family, has to spend for the medication of his wife who has been ill for quite sometime. He submits that the back-wages need to be granted. Nevertheless, the same cannot be granted as a matter of course.

34 It is neither the case of the Petitioner nor the case of the Respondent that the Petitioner/ Employee is gainfully employed. Learned Advocate for the Respondent/ Management has vehemently opposed the prayer for back-wages. However, in order to reduce the rigours of litigation and the effect of unemployment, I am directing the Respondent/ Management to pay 50% of the back-wages to the Petitioner from the date of his termination till his reinstatement, within a period of THREE

MONTHS.

35 The Writ Petition is allowed in the above terms. Rule is made absolute accordingly.

(RAVINDRA V. GHUGE, J.)