

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6795/2013

Balwant S/o. Mohan Badve,
Age 63 years, Occu, Retired,
R/o. 129/1, Lal Taki, Ahmednagar,
Taluka & District Ahmednagar. ...Petitioner...

Versus

Ahmednagar Municipal Corporation,
Ahmednagar.
Through its Commissioner. ...Respondent...

.....
Shri. P. V. Barde, Adv. for petitioner.
Shri. V. S. Bedre, Adv. for respondent.
.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 10.12.2015

ORAL JUDGMENT :

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

2] The petitioner is aggrieved by the impugned judgment and order dated 9.7.2013, by which his Complaint (ULP) No.5/2008 has been dismissed.

3] The petitioner is a Civil Engineer. He has been issued with a show cause notice on 30.3.2007. He retired on 1.4.2007 on attaining the age of superannuation. A

- 2 -

charge-sheet setting out the charges against the petitioner is dated 24.7.2007, which is obviously issued after the retirement of the petitioner.

4] The issue, therefore, raised before this Court is as to whether disciplinary proceedings can be initiated after the retirement of an employee. The issue raised is no longer *res integra* in the light of the judgment of the Apex Court in the case of *UCO Bank & another v. Rajinder Lal Capoor (AIR 2007 SC 2129)*.

5] Considering the above, having heard the learned Advocates for the respective sides at length on 7.12.2015 and again today, I am to consider the undisputed fact situation in the light of the judgment of the Apex Court in the case of *UCO Bank (supra)*.

6] The undisputed facts are as under:-

[a] Show cause notice was issued on 30.3.2007 calling for an explanation from the petitioner.

[b] He stood superannuated on 1.4.2007.

[c] The respondent - Corporation issued a charge-sheet dated 24.7.2007.

[d] An enquiry was conducted pursuant to the above-said charge-sheet.

- 3 -

[e] By order dated 5.1.2008, the petitioner was directed to deposit Rs.15,000/- as loss caused to the Government.

[f] By order dated 30.5.2008, an order deducting Rs.25/- from the retiral benefits of the petitioner in relation to a charge-sheet dated 12.2.2008 was also passed.

7] The petitioner preferred Complaint (ULP) No.5/2008 before the Industrial Court at Ahmednagar. By an interim order, he was protected against recovery of Rs.15,000/- pursuant to the order dated 5.1.2008.

8] By the impugned judgment dated 9.7.2013, the complaint was dismissed.

9] The Industrial Court had framed an issue as to whether the complaint is maintainable under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The complaint was held tenable. This conclusion of the Industrial Court has not been challenged by the respondent - Corporation before this Court.

10] The Industrial Court concluded that since a show cause notice was issued on 30.3.2007, the charge-sheet

- 4 -

dated 24.7.2007 will have to be deemed to be connected with the show cause notice and hence it will have to be construed that the enquiry was initiated prior to the superannuation of the petitioner on 1.4.2007.

11] Rule 5 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, prescribes minor and major penalties. The minor penalties are set out below Rule 5(1) and which read as under:

"5. Penalties :

(1) Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and sufficient reasons and as hereinafter, provided, be imposed on a Government servant, namely -

Minor Penalties -

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to Government, by negligence or breach of orders;
- (iv) Withholding of increments of pay;
- (v) Reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not

- 5 -

have the effect of postponing the future increments of his pay;

(vi) Reduction to lower time-scale of pay, grade, post or service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or service from which he was reduced, with directions as to whether or not, on promotion on the expiry of the said specified period, --

a) the period of reduction to the time-scale of pay, grade, post or service shall operate to future increment of his pay, and if so, to what extent, and,

b) the Government Servant shall regain his original seniority in the higher time-scale of pay, grade, post or service."

12] Rule 8 provides for the procedure to be followed for imposing major penalties. Rule 8(1), (2) and (3) read as under:-

"8. Procedure for imposing major penalties:

(1) No order imposing any of the major penalties shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 9, or where such inquiry is held under the Public Servants (Inquiries) Act 1850 (37 of 1850), in the manner provided in that Act.

- 6 -

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that, where there is a complaint of sexual harassment within the meaning of rule 22 A of Maharashtra Civil Service (Conduct) Rules, 1979, the Complaints Committee established in each Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

Explanation -

Where a disciplinary authority itself holds an inquiry under this rule, any reference to an inquiring authority in this rule shall, unless the context otherwise requires, be construed as reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule,

- 7 -

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."

13] It is, therefore, apparent that if a major penalty is attracted, the employer has to initiate a departmental enquiry and if it proposes to hold an enquiry, the disciplinary authority shall draw up the substance of the imputations of mis-conduct or mis-behaviour into definite and distinct articles of charge.

14] Rule 10 of the said Rules prescribes the procedure for imposing minor penalties. Rule 10 reads as under:-

"10. Procedure for imposing minor Penalties:

(1) Save as provided in sub-rule (3) of rule 9, no

- 8 -

order imposing on a Government servant any of the minor penalties shall be made except after

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in rule 8, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking into consideration the representation, if any, submitted by the Government servant under clause (a) of this rule and the record of inquiry, if any, held under clause (b) of this rule;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government's servant or to withhold increment of pay for a period exceeding three years or to

- 9 -

withhold increments of pay with cumulative effect for any period [or to impose any of the penalties specified in clauses (v) and (vi) of sub-rule (1) of the rule (5)], an inquiry shall be held in the manner laid down in sub- rule (3) to (27) of rule 8, before making any order of imposing on the Government servant any such penalty.

(3) The record of the proceeding in such cases shall include-

(i) a copy of the intimation to the Government servant of the proposal to take action against to him;

(ii) a copy of the statement or imputations of misconduct or misbehaviour delivered to him;

(iii) his representations, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission, if any;

(vi) the findings on each imputation of misconduct or misbehaviour; and

(vii) the orders on the case together with the reasons therefor."

15] It is clear from Rule 10 that the employer is not required to conduct an enquiry if the charges leveled are of minor character and the punishment, which is likely to be attracted, is a minor penalty. However, under Rule 10(1)(b), it is left to the discretion of the employer to hold an enquiry if it so desires and the same

shall have to be done in accordance with Rule 8.

16] Shri V.S. Bedre, learned Advocate appearing for the Corporation, on a pertinent query with regard to Rule 5(1)(iii), reproduced above, submits that since the District Collector conducted an enquiry and arrived at a conclusion that the petitioner, while performing his duty of demolishing a dilapidated house in which the tenant Shri Pargaonkar was staying, had caused a loss to the tenant, which can be computed in terms of money, which is Rs.15,000/-. Shri V.S. Bedre frankly submits that the Government or the respondent - Corporation has not paid the amount of Rs.15,000/- to the said tenant.

17] In the light of this fact situation, it cannot be said that the respondent was attempting recovery of any pecuniary loss caused by the petitioner by negligence or breach of orders as is set out under Rule 5(1)(iii).

18] The Apex Court in the case of *UCO Bank* (supra) has considered initiation of disciplinary proceedings when the concerned employee had superannuated. The observations of the Apex Court in paragraph nos.21, 22 and 23 of the *UCO Bank's* judgment are as under:-

"21. The aforementioned Regulation, however, could be invoked only when the Disciplinary Proceedings had

- 11 -

clearly been initiated prior to the respondent's ceases to be in service. The terminologies used therein are of seminal importance. Only when a disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed on the basis of the legal fiction created thereunder, i.e., continue "as if he was in service". Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceeding, it is trite law, is not initiated merely by issuance of a show cause notice. It is initiated only when a chargesheet is issued (See *Union of India etc. etc. v. K.V. Jankiraman, etc. etc.* reported in AIR 1991 SC 2010). This aspect of the matter has also been considered by this Court recently in *Coal India Limited & others v. Saroj Kumar Mishra* [2007 (5) SCALE 724] wherein it was held that date of application of mind on the allegations leveled against an officer by the Competent Authority as a result whereof a chargesheet is issued would be the date on which the disciplinary proceedings said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations. Albeit in a different fact situation but involving a similar question of law in *Coal India Ltd. (supra)* this Court held :

"13. It is not the case of the appellants that

- 12 -

pursuant to or in furtherance of the complaint received by the vigilance department, the competent authority had arrived at a satisfaction as is required in terms of the said circulars that a chargesheet was likely to be issued on the basis of a preliminary enquiry held in that behalf or otherwise.

14. The circular letters issued by the appellants put restrictions on a valuable right of an employee. They, therefore, are required to be construed strictly. So construed there cannot be any doubt whatsoever that the conditions precedent contained therein must be satisfied before any action can be taken in that regard."

It was furthermore observed that :

"20. A departmental proceeding is ordinarily said to be initiated only when a chargesheet is issued."

(See also *Union of India v. Sangram Keshari Nayak* 2007 (6) SCALE 348)

22. Respondent, therefore, having been allowed to superannuate, only a proceeding, inter alia, for withholding of his pension under the Pension Regulations could have been initiated against the respondent. Discipline and Appeal Regulations were, thus not attracted. Consequently the chargesheet, the enquiry report and the orders of punishment passed by the Disciplinary Authority and the Appellate Authority must be held to be illegal and without jurisdiction.

An order of dismissal or removal from service can be passed only when an employee is in service. If a person is not in employment, the question of

- 13 -

terminating his services ordinarily would not arise unless there exists a specific rule in that behalf. As Regulation 20 is not applicable in the case of the respondent, we have no other option but to hold that the entire proceeding initiated against the respondent became vitiated in law."

19] There is no dispute that a show cause notice was issued on 30.3.2007. The Apex Court, however, has concluded that the disciplinary proceedings shall be said to have been initiated by the issuance of a charge-sheet in accordance with the Discipline & Appeal Rules or such rules as may be applicable to an employee. Shri Bedre is unable to point out from the concerned rules as regards the existence of any provision, which would indicate that the disciplinary proceedings can be said to have been initiated on the basis of a show cause notice.

20] As such, in the light of the view taken by the Apex Court in the case of UCO Bank (supra), I am of the view that the disciplinary proceedings against the petitioner could not have been initiated after his superannuation. I am not dealing with the issue as to whether by virtue of any provision, the respondent could have sought permission from any appropriate authority or

- 14 -

the Government for initiating a disciplinary action against the petitioner after his superannuation.

21] This petition, therefore, succeeds. The impugned judgment of the Industrial Court dated 9.7.2013 is rendered perverse and erroneous since it has failed to consider the law applicable. Complaint (ULP) No.5/2007, therefore, stands allowed. The impugned order of recovery dated 5.1.2008 issued by the respondent stands quashed and set aside.

22] At this juncture, Shri Barde submits, on instructions from the petitioner present in the Court, that the petitioner was litigating only to clear the stigma attached to him and since he felt that he is innocent. Despite his success in this petition, the petitioner makes a statement that he would donate an amount of Rs.15,000/- to the respondent – Corporation as an act of gratis. The said statement is accepted.

23] Rule is made absolute in the above terms with no order as to costs.

(RAVINDRA V. GHUGE, J.)