

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9659 OF 2013

Haribhau Venkatrao Gambhire,
Age 43 years, Occ. Asstt. Teacher,
Zilla Parishad, Latur R/o Yerol,
Tq. Shirur Anantpal, Dist. Latur.

..Petitioner

Versus

1. The State of Maharashtra
Through Secretary, School
Education Department,
Mantralaya, Mumbai 32.

2. The Divisional Additional
Commissioner,
Aurangabad Division,
Aurangabad.

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

..Respondents

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Advocate for Petitioner : Shri Awale Girish L.
AGP for Respondents 1 & 2 : Smt. Shelke S.D.
Advocate for Respondent 3 : Shri Hon A.V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 01, 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 dated 24.6.2011, issued by the Chief Executive Officer, Zilla Parishad, Latur and the judgment of the learned Additional Commissioner, Aurangabad in Appeal No. 143 of 2012.

5. The petitioner was charged with having committed grave and serious misconduct, vide the charge sheet dated 10.2.2010 setting forth the charges levelled upon him, which included behaving in a disorderly and unbecoming manner in an educational seminar, consuming liquor and creating a disorderly situation in the seminar and using abusive and filthy language.

6. Upon conclusion of the departmental enquiry, the petitioner was held guilty of the charges levelled upon him vide the conclusions set out in the enquiry report dated 31.8.2010. Pursuant thereto, the petitioner was awarded the punishment of permanent stoppage of two annual increments.

7. The petitioner challenged the order of punishment by preferring Appeal No.143 of 2012. By judgment and order dated 6.5.2013, the Appeal was dismissed.

8. The petitioner submits that none of the charges levelled upon him have been proved. There is no evidence to establish the charges against him. The order of punishment dated 24.6.2011 issued by the Chief Executive Officer is unsustainable and the impugned order dated 6.5.2013 is perverse.

9. He submits that only on the basis of hearsay evidence, he has been held guilty. There is no direct evidence. Some persons are anti-pathetic towards the petitioner and they desire that the clean service record of the petitioner be blemished. The punishment is disproportionate and hence this petition be allowed.

10. Shri Hon, learned Advocate for respondent No.3 has strenuously supported the impugned order. He submits that the evidence recorded in the enquiry has been considered, analyzed and conclusions have been drawn by the Enquiry Officer in his 18 pages report. The charge levelled upon the petitioner has been substantially proved. The witnesses have deposed in the enquiry and have supported the charges. Though the enquiry report may not be happily worded, it indicates that the charges were substantiated with evidence and therefore, a major misconduct committed by the petitioner was established.

11. He submits that the third respondent had proposed a higher punishment of scaling down the salary of the petitioner to the basic

pay, which would have impacted (cumulative effect) the petitioner till his retirement. His reply was considered and in order to afford him an opportunity of improving himself, the punishment was reduced to permanent stoppage of two annual increments. He, therefore, submits that the competent respondent No.2 authority has rightly considered the entire evidence on record and has concluded that the punishment awarded to the petitioner was commensurate to the gravity of the misconduct.

12. I have considered the submissions of the learned Advocates as well as the request of the petitioner that the punishment be scaled down further. It is trite law that judicial interference in quantum of punishment could be permitted only if the punishment awarded appears to be shockingly disproportionate and an outrageous defiance of logic and moral standards. The Wednesbury principles, governing the scope of interference were laid down in the case of Associated Provincial Picture Houses Ltd. v/s Wednesbury Corporation [(1947) 2 ALL ER 680 : (1948) 1 KB 223]. The relevant paragraphs read as under:-

“ The contention of the authority, in my opinion, is based on a misconception of the effect of the Act in granting this discretionary power to local authorities. The courts must always remember, first, that the Act deals, not with a judicial act, but with an executive act; secondly, that the conditions which, under the exercise of that executive act, may be imposed are in

terms put within the discretion of the local authority without limitation; and thirdly, that the statute provides no appeal from the decision of the local authority. What, then, is the power of the courts ? The courts can only interfere with an act of an executive authority if it be shown that the authority have contravened the law. It is for those who assert that the local authority have contravened the law to establish that proposition. On the face of it, a condition of this kind is perfectly lawful. It is not to be assumed prima facie that responsible bodies like local authorities will exceed their powers, and the court, whenever it is alleged that the local authority have contravened the law, must not substitute itself for the local authority. It is only concerned with seeing whether or not the proposition made good. When an executive discretion is entrusted by Parliament to a local authority, what purports to be an exercise of that discretion can only be challenged in the courts in a very limited class of case. It must always remembered that the court is not a court of appeal. The law recognises certain principles on which the discretion must be exercised, but within the four corners of those principles the discretion is an absolute one and cannot be questioned in any court of law.

What, then, are those principles? They are perfectly well understood. The exercise of such of a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter

in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the court. Bad faith, dishonesty-those, of course, stand by themselves-unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matters which are relevant for consideration. In the present case we have heard a great deal about the meaning of the word "unreasonable." It is true the discretion must be exercised reasonably. What does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, you may have something so absurd that no sensible person could even dream that it lay within the powers of the authority. WARRINGTON, L.J., I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head."

13. The Apex Court, considering the Wednesbury principles has laid

down the law in the matter of the Chairman & Managing Director, United Commercial Bank v/s P.C.Kakkar [(2003) 4 SCC 364], and concluded that the Court should not interfere with the decision of the Employer unless the said decision appeared to be an act of procedural impropriety or was illogical or which shocked the judicial conscience in a sense that the decision could be said to be in defiance of logic or moral standards. It was thus, concluded in paragraph 15 of the said judgment as under:-

“15. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him.

One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

14. It is, therefore, no longer *res integra* that the power of the Court to interfere with the quantum of punishment is limited and is based on the conclusion that the awarded punishment is shockingly disproportionate.

15. The petitioner has relied upon the judgment of the learned Division Bench of this Court in the case of Narendra Motilal Bodkhe Vs. Additional Commissioner, Nagpur [2006 (5) Mah.L.J. 229] and in the case of Shivdas Dodku Borkar Vs. District and Sessions Judge [2012 Supp. Bom.C.R. 850]. In both these cases, it is concluded that the punishment of stoppage of increments is a major punishment and a departmental enquiry ought to be conducted. In the instant case, before imposing the

punishment, a departmental enquiry has been held.

16. I have gone through the enquiry officer's report and the conclusions of respondent No.2 appellate authority. Witnesses have deposed in the enquiry to substantiate the charges levelled upon the petitioner. The appellate authority has considered the evidence and the reasons assigned by the enquiry officer and has dismissed the appeal filed by the petitioner. Hearsay evidence is acceptable in service jurisprudence.

17. I do not find that the impugned punishment could be termed to be shockingly disproportionate. I am not convinced that the impugned judgment of the appellate authority dated 6.5.2013 could be termed as perverse or erroneous. This petition being devoid of merits is, therefore, dismissed.

18. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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