

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11231 OF 2014

Mohd. Qayyum s/o Mohd. Ibrahim,
Age 52 years, Occu. Service as Driver
in District Rural Development Agency
Parbhani, R/o. Dargah Road,
Near Railway Gate, Parbhani,
Tq. and District Parbhani

...Petitioner

versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai 32.
2. The Chief Executive Officer,
Zilla Parishad, Parbhani and
Chairman, District Rural
Development Agency, Parbhani.
3. The Project Director,
District Rural Development Agency,
Parbhani

...Respondents

...
Advocate for Petitioner : Mr. Maniyar Irfan D
AGP for Respondent No.1: Mr. S.S. Tope
Advocate for Respondents 2 and 3: Mr. S. R. Yadav
.....

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 6th AUGUST, 2015

JUDGMENT (PER S.V. GANGAPURWALA, J.) :-

1. Rule. Rule made returnable forthwith. By consent of parties,
taken up for hearing.

2. Mr. Maniyar, the learned counsel, submits that the petitioner was initially appointed under District Rural Development Agency (D.R.D.A.) scheme. For the alleged incidents in the year 1994, 1995 and 1996, an enquiry was conducted against the petitioner. The petitioner was also suspended in the year 1997. The charges were framed against the petitioner on 27.1.1998. In fact, the enquiry report was also submitted by the Enquiry Officer in the year 2005, however, as no charges were proved against the petitioner, no action was taken against the petitioner. The learned counsel submits that again in the year 2014, fresh enquiry for the same charges is being conducted. The learned counsel submits that the same is not permissible. According to the learned counsel, such delayed enquiry cannot be conducted. The learned counsel relies on the judgments of the Apex Court in the cases of ***State of M.P. vs. Bani Singh and another, reported in AIR 1990 SC 1308***, ***State of Maharashtra vs. Vijay Kumar Aggarwal, reported in 2014 AIR (SCW) 1077*** and ***Shri Anant R. Kulkarni vs. Y.P. Education Society & Ors. reported in 2013 (6) SCC 515*** and the judgment of this Court in the case of ***Pratibha Ashok Salvekar vs. Allahabad Bank and Ors. reported in 2014(7) Bom.C.R. 510***. The learned counsel submits that the petitioner was subsequently reinstated in the year 2000. The learned counsel submits that this court in writ petition No. 1510 of 1998 had directed the respondents to complete the enquiry within

two months vide order 24.9.1998.

3. Mr. Yadav, the learned counsel for the respondents submits that it is true that enquiry was initiated against the petitioner and charges were also framed in the departmental enquiry in the year 1998. That Enquiry officer was not employee of the respondents but was independent agency. Though letter is produced on record saying that enquiry report is forwarded, no such report in respect of the charges framed against the petitioner was forwarded. The enquiry report in respect of other three persons, against whom also separate enquiry was initiated, was forwarded and not in respect of enquiry in which the petitioner was involved. The learned counsel submits that in the year 2006 the said communication was made. However, upon going through the record, it is clear that no such report is received. Learned counsel submits that delay itself cannot be a ground to quash the charges or the enquiry. The charges against the petitioner are grave and serious. The learned counsel relies on the judgments of the Apex Court in the case of **Secretary, Ministry of Defence and Ors. v. Prabhash Chandra Mirdha, reported in AIR 2012 SC 2250 and the Chairman LIC of India and ors. vs. A. Masilamani, reported in 2013 ALL SCR 157** and submits that only on the ground of delay the proceedings need not be terminated.

4. We have considered the submissions canvassed by the learned counsel for the respective parties. The petitioner, initially, was appointed in employment under DRDA scheme. Initially, the enquiry was initiated against the petitioner when the petitioner was an employee under DRDA scheme in the year 1998. However, the dispute is with regard to the submission of enquiry report by the Enquiry Officer. There is no dispute that enquiry officer was independent agency appointed at the same time. It is submitted that though letter is issued by the Enquiry Officer saying that report is submitted, no report in respect of enquiry of which the petitioner was concerned was submitted.

6. The petitioner's services are transferred with the Zilla Parishad in the year 2001. Now the Zilla Parishad, in the year 2014, has sought to conduct enquiry again.

7. It is also not in dispute that the present enquiry which is sought to be commenced is in respect of the same charges for which initial enquiry in the year 1998 was commenced. This court, in writ petition bearing No. 1510 of 1998 had directed the respondents to complete the enquiry within two months. Even accepting the contentions of the respondents that enquiry report was not received, still the same is of the year 2006. No plausible reasons are given as to why till 2014

further steps for conducting enquiry has not been taken. It is in the year 2014 fresh enquiry is sought to be conducted in respect of the same charges. The charges for which now enquiry is sought to be conducted is also 20 years old. Two decades have lapsed. It has been observed by the Apex Court in the case of **Secretary, Ministry of Defence and Ors. v. Prabhash Chandra Mirdha (supra)**, in para 17, as follows:-

“17. However, in the instant case, the Tribunal has quashed the charge sheet vide order dated 20th March, 1997 in respect of misconduct alleged to have been taken place on 31.8.1991. Though the allegations against the delinquent had been very serious i.e. demand and acceptance of bribe, a period of two decades has passed since the alleged incident. Disciplinary proceedings could not be proceeded further as the charge-sheet itself had been quashed. There is nothing on record to show that the respondent delinquent is still in service and that even if the appellants are permitted to proceed with the inquiry, the evidence which was available 21 years ago would be available today.”

8. The petitioner is being subjected to enquiry for the second time for the same charges though the enquiry was concluded earlier in the year 1998. The enquiry report was said to be submitted but it may have happened that respondents may not have received the said report. However, considering the fact that the enquiry was conducted earlier also, now, after lapse of 20 years, it would be

inappropriate to conduct fresh enquiry. The charges are for the period when the petitioner was working under D.R.D.A. scheme and subsequently in the year 2001 the petitioner is transferred to Zilla Parishad. Now Zilla Parishad seeks to conduct enquiry in the year 2014. The charges are stale. The petitioner would also be prejudiced by non availability of evidence after a long slumber of 20 years.

9. Considering the aforesaid conspectus of the mater, we are inclined to allow the writ petition. Writ petition succeeds. Rule is made absolute in terms of prayer clause "B". No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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