

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
 WRIT PETITION NO.468 OF 2007

Mohan Vithoba Mohite

...Petitioner

v/s.

Municipal Corporation of Gr.Mumbai
 and anr.

...Respondents

...

Mr.J.S.Kini for the Petitioner.

Mr.Ram Apte, Sr.Counsel with Ms.Mastakar for the Respondents.

...

CORAM : A.A. SAYED, J.

DATED : 13 MARCH 2015

P.C.:

This Petition filed under Article 226 of the Constitution impugns an order dated 22 September 2006 passed by the Addl. Municipal Commissioner (W.S.) rejecting the Appeal of the Petitioner and confirming the order dated 14 May 2004 of the C.A. (Finance). The impugned order dated 14 May 2004 reads as follows:-

"ORDER

It was reported that one M/s Modest Marytime Services Pvt. Ltd. had lodged a refund claim for Octroi to the tune of Rs.4,10,885/- in the office of Dy. A & C (Octroi). The original claimant was M/s. Modest Marytime Services Pvt. Ltd., a cheque for Rs.4,10,885/- came to be surreptitiously issued in the name of M/s. Dilip Engineering Const. Co. at the behest of some of the Municipal employees as well as some outsiders. The said amount was however, later on recovered from MIS. Dilip Engineering Const. Co. As the preliminary enquiry in the matter revealed a prima facie case of gross misconduct on the part of Shri M.V. Mohite, Jr.

A.& A.A. a fullfledged departmental enquiry was ordered to be held against him under No.AMC/P/13555 dtd.10/1/03.

Accordingly a F.F.D.E. was held against him after service of Charge-sheet under No. ChOE/DE/RNB/JYD/1071 dt.21/3/03 on him and he was given full opportunity to putforth his defence.

On careful consideration of his oral deposition dt.29/4/03, his reply to the charge-sheet dt.29/5/03, his final statement of defence dt.8/8/03, the evidence on record and the enquiry officer's report in the matter. A.M.C. (F) held the charge levelled against him as proved against him and further passed tentative orders under No.AMC/P/4 dt.611 1/03 that Shri M.V. Mohite be removed from Municipal Service for the charge held as proved against him.

Accordingly, the Show Cause Notice under No. ChOE/DE/JYD/1071 was served on him on 6/12/03 directing to show cause as to why he should no be removed from Municipal Service. Shri Mohite has submitted his reply dated 18/12/03. As per his request he was personally heard by A.M.C. (P) on 15/3/04.

On careful consideration of his reply and say at the time of personal hearing and evidence on record, A.M.C. (P) further passed the final orders under No.A.M.C./P/Con/115 dt.13/4/04 that Shri M.V. Mohite. Jr. A& A.A. be punished by reducing his present basic pay to the minimum of the grade of Jr. A & A A. with permanent effect and thereafter he will draw his usual annual increments over the reduced basic pay.

Shri M.V.Mohite, Jr. A & A. A. is therefore hereby punished by reducing his present basic pay to the minimum of the grade of Jr.A &.A.A. with permanent effect and thereafter he will draw his usual annual increments over the reduced basic pay.”

2. The Petitioner is an employee working as a Jr.Audit and Accounts Assistant in the department of Dy. Chief Accountant (Octroi) from 1991. The issue in the present matter arises from disciplinary proceedings initiated against the Petitioner in respect of a claim of octroi refund for Rs.4,10,885/- in the name of M/s.Modest Marytime Services Pvt.Ltd., which was received in the office of Dy.Chief Accountant (Octroi). The claim was pre-audited by the office of Dy.Chief Accountant (Octroi) and the same was returned to Octroi Department for further processing. The claim was again received by the office of the Dy.Chief Accountant (Octroi), which was scrutinized and passed for payment. After the claim was passed by the Account Officer, the claim papers were sent to the Petitioner to take necessary entires in the Inward Register as well as Cheque Register. The allegation, inter alia, against the Petitioner was that he has scratched the name of M/s Modest Marytime Services Pvt.Ltd. and wrote the name of Dilip Engg. Construction Co. in its place. Thus, the allegation against the Petitioner was that he has with malafide intention tampered the municipal record and caused to draw cheque of Rs.4,10,855/- in the name of Dilip Engg. Construction Co. and with an intention to destroy the evidence he misplaced or caused to misplace the relevant set of claim papers from the office of Dy.Chief Accountant (Octroi) as well as Dy. A & C (Octroi), and thus defrauded the Municipal

Corporation to the tune of Rs.4,10,855/- but for the timely detection of the said fraud. Disciplinary proceedings were initiated against the Petitioner and other employees. The Inquiry Officer conducted inquiry and furnished the report dated 30 October 2003. Consequent thereto, a show cause notice was issued to the Petitioner pursuant to which the impugned orders came to be passed.

3. On perusal of the record, it is seen that the punishment was solely based on the hand writing expert's opinion. Though several other witnesses were examined, it is not disputed before the Court that there were no allegation in their evidence in so far as the Petitioner is concerned. It is pointed out by the learned Counsel for the Petitioner that the service record of the Petitioner is without any blemish and absolutely clean and at the highest it could only be termed as negligence on part of the Petitioner. It is an admitted position that so far as the Municipal Corporation is concerned, there was no revenue loss. In the absence of any assertion of misappropriation in the oral evidence against the Petitioner, the Petitioner cannot be held to be guilty of the charge of misappropriation of funds.

4. In these circumstances and in view of the concession from the learned Counsel for the Petitioner (upon instructions being taken from

the Petitioner who is present in the Court), that the Petitioner is agreeable to a nominal punishment of reducing his basic pay for two years in respect of his negligence, in my view, interest of justice would be served by acceding to that request and modifying the punishment and substituting the last para of the order dated 14 May 2004.

5. Consequently, the impugned order dated 22 September 2006 in Appeal is set aside and last para of the impugned order dated 14 May 2005 which reads as follows:

Shri M.V.Mohite, Jr. A & A. A is therefore hereby punished by reducing his present basic pay to the minimum of the grade of Jr.A &.A.A. with permanent effect and thereafter he will draw his usual annual increments over the reduced basic pay.

shall be substituted as under:

Shri M.V.Mohite, Jr. A & A. A is therefore hereby punished by reducing his present basic pay to the minimum of the grade of Jr.A &.A.A. (i.e. Rs.4,170/-) for a period of two years from today and thereafter he will draw his usual annual increments over the regular basic pay.

6. The Petition is disposed of in the aforesaid terms.

(A.A. SAYED, J.)