IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No. 1504 of 2003

Shri Vasantrao S/o Ganpatrao Gotmare vs. The Divisional Commissioner, Nagpur Division, Nagpur and another

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Shri O.D.Kakde, Advocate for the petitioner.
Shri T.R.Kankale, Assistant Government Pleader for the respondent no.1.
Shri V.D.Raut, Advocate for the respondent no.2.

CORAM : SMT. VASANTI A. NAIK & A.M.BADAR, JJ
DATE : 20.4.2015

By this petition, the petitioner challenges the orders passed by the respondent nos.1 and 2 on 13.9.2001 and 2.4.2002 respectively holding that an amount of Rs. 1,20,634/- was liable to be recovered from the petitioner in view of the loss caused to the Zilla Parishad.

According to the respondent Zilla Parishad, the petitioner had misappropriated a sum of Rs. 1,20,634/- while working as a Parishad Servant and hence after the issuance of the show cause notice to the petitioner, minor penalty of recovery of the said amount from the retiral benefits of the petitioner, was sought. The petitioner had attained the age of superannuation on 30.4.1999. Before the petitioner was superannuated, a show cause notice dated 31.3.1999, asking the petitioner as to why the said amount should not be recovered from him for the loss caused to the Zilla Parishad due to misappropriation of the said amount by the petitioner, was issued. The petitioner replied the notice and after a consideration of the same, the Chief Executive Officer, Zilla Parishad by an order dated 13.9.2001 directed the recovery of the said amount from the petitioner. The petitioner filed an appeal against the said order before the Divisional Commissioner, Nagpur Division, Nagpur. The appeal was dismissed by the order dated 22nd April, 2002.

It is submitted on behalf of the petitioner that the impugned orders directing the recovery of the amount from the petitioner are liable to be set aside as no departmental enquiry was held against the petitioner before imposing the said penalty. It is submitted that the amount could have been recovered from the petitioner only from his pay and not from his pensionary benefits. It is stated that in view of Rule 7 of the Maharashtra Zilla Parishads District Services (Disciplinary and Appeal) Rules, 1964, the show cause notice ought to have been issued by the Chief Executive Officer and not by the Block Development Officer, as was done in this case.

On hearing the learned counsel for the parties and on a perusal of the provisions of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964, it appears that there is no merit in any of the submissions made on behalf of the petitioner. Rule 4 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 provides for various penalties, which could be imposed on the Parishad Servant. The penalty imposed on the petitioner is mentioned in clause (iii) of Rule 4 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules of 1964. Clause (iii) of Rule 4 reads thus:

> "4(iii):- Recovery from pay of the whole or part of any pecuniary loss caused to the Zilla Parishad by

negligence or breach of the orders".

Rule 5 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 speaks of the Disciplinary authorities The Chief Executive Officer, according to Rule 5, is entitled to impose any of the penalties mentioned in Rule 4 on any Parishad servant. In view of the sub rule 2 of Rule 5, the penalty could be imposed on a Parishad servant by the Appointing Authority or by any other authority empowered by the Chief Executive Officer in that behalf. Rule 6 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 lays down the procedure for imposing major penalties. Sub rule 1 of Rule 6 provides that no order imposing any of the penalties specified in clauses (iv) to (vii) of Rule 4 shall be passed except after an inquiry is held. It is clear from a combined reading of Rules 4 and 6 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964, that the disciplinary enquiry is contemplated only when a penalty specified in clauses (iv) to (vii) of Rule 4 is proposed. In the instant case, the Zilla Parishad has not imposed the penalty under clauses (iv) to (vii) of Rule 4 and the penalty is imposed under Rule 4 (iii) of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964. It is clear from a reading of Rules 4, 6 and 7 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964, that the disciplinary enquiry is not contemplated where the penalty of recovery is proposed. Admittedly, in the instant case penalty is imposed on the petitioner under clause (iii) of Rule 4. Hence, the first submission made on behalf of the petitioner that the orders are liable to be set aside as the same are passed without holding departmental enquiry, is liable to be rejected. Rule 7 of the Rules 1964 provides the procedure for imposing minor penalty. Under this Rule, only a notice to the Parishad Servant with the statement of allegations is necessary. The Disciplinary Authority is liable to consider the reply of the employee before imposing the punishment of minor penalty. Before imposing the penalty on the petitioner, the Zilla Parishad had issued a show cause notice dated 31.3.1999 which was received by the petitioner on 9.4.1999. The reply of the petitioner was considered by the Zilla Parishad before imposing the minor penalty of recovery of the amount towards pecuniary loss caused to the Zilla Parishad.

There is no force in the second submission made on behalf of the petitioner that only the Chief Executive Officer was empowered to issue the show cause notice. Firstly, this ground is not raised in the petition and secondly it is clear from the reading of Rule 5(2) that the penalty under Rule 4 could be imposed on a Parishad servant by any authority empowered by the Chief Executive Officer. The submission made on behalf of the petitioner that the order is liable to be set aside as the Chief Executive Officer had not served the show cause notice on the petitioner and the same was served by the Block Development Officer, is liable to be rejected.

There is also no merit in the last submission made on behalf of the petitioner that the amount recoverable from the petitioner towards the pecuniary loss caused to the Zilla Parishad, could be recovered only from the pay of the petitioner and the same could not have been recovered from the retiral benefits payable to the petitioner. In the instant case, the petitioner retired from services on 30.4.1999 and since the loss was caused to the Zilla Parishad for the misconduct of the petitioner before his retirement, the amount towards the pecuniary loss was sought to be recovered from the pensionary benefits of the petitioner.

At this stage, the learned counsel for the petitioner placed reliance on the rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. It is stated that in view of the Rule 27(2) of the Rules, 1982, a departmental enquiry cannot be instituted against a government servant after the government servant retires. The submission made on behalf of the petitioner is ill-founded. The submission would apply only in a case where the departmental enquiry is initiated against the Parishad servant after his retirement. In this case, a departmental enquiry is not initiated against the petitioner after his retirement. A reference to the provisions of Rule 27 and Rule 6 of the Rules of 1982 is misplaced.

Since, there is no merit in the writ petition, the petition is dismissed with no order as to costs.

JUDGE **JUDGE**

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