

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1193 OF 2004

Ramchandra Gabaji Patil,
Age 53 years, Occ. Service
R/o Mandal, Tq. Amalner,
District Jalgaon.

..Petitioner

Versus

1. The State of Maharashtra

2. Additional Commissioner,
Nasik (Inquiry Officer,
Zilla Parishad Employees),
Nasik Division, Nasik.

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

..Respondents

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Advocate for Petitioners : Shri Deshmukh R.M.
AGP for Respondent 1 : Shri Kutti P.N.
Advocate for Respondent 3 : Shri Choudhary N.S.
Respondent 2 : Served

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 02, 2016

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ORAL JUDGMENT:-

1. The petitioner is aggrieved by the order dated 3.10.2001, by which, his appeal against his removal from service has been set aside by respondent No.2 - appellate authority.

2. Grievance of the petitioner is that he was prevented from reporting for duties from 7.10.1987. He had submitted an application

dated 16.11.1987 praying for resumption of duty. Thereafter, he orally met respondent No.3 - establishment for joining duties. He then filed an application dated 10.12.1999, 13.12.1999 and made oral requests for reporting for duties. He has received the charge sheet, in which, his absence has been mentioned. He was not given the opportunity to cross-examine the witnesses of the department. He was not permitted to engage an Advocate for defending him in the enquiry.

3. Learned Advocate for respondent No.3 submits that the analysis of the evidence available can be seen in the impugned order. In fact, the petitioner had tendered an application dated 23.3.2000, in which, he admitted his unauthorized absence and submitted that he was suffering ailments as a consequence of which he was not aware of his own existence. He, therefore, submits that in this backdrop, the management could have concluded that the petitioner had abandoned employment. Yet, he was subjected to the enquiry.

4. Considering the submissions of the learned Advocates, I have gone through the petition book with their assistance.

5. Declining an opportunity to cross-examine a witness, in itself, would not vitiate the enquiry ipso facto, unless the said event is tested on the touchstone of prejudice. Only if it appears that

prejudice would be caused to the delinquent by the refusal to cross-examine a witness, it could be construed that the principles of natural justice have been violated.

6. In the backdrop of the submissions of the learned Advocate for the petitioner, his applications themselves would indicate as to whether the petitioner was unauthorizedly absent or not. There is no dispute that oral requests cannot be considered in matters of unauthorized absenteeism since it is word against word.

7. In the instant case, the petitioner submits that he had tendered an application on 16.11.1987. His second application is dated 10.12.1999, which is after 12 years. He has filed another application dated 23.3.2000, wherein, he has conceded that he was absent on account of having a mental illness and as such, could not attend duties.

8. Considering the admitted position as above, even if the petitioner was said to have been deprived of the opportunity to cross-examine the witness in the enquiry, it would not affect the result of the enquiry since the petitioner himself has admitted that he was unable to report for duties for a period of more than 12 years due to mental imbalance. There is no dispute that the leave was not sanctioned inasmuch as, there was no written application placed

before the establishment in between 17.11.1987 and 10.12.1999. This period of absence cannot be condoned by concluding that the punishment of dismissal from service is shockingly disproportionate to the gravity of the misconduct.

9. In the light of the above, this petition, being devoid of merits, is therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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