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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1408/2005

Sunil s/o Digambar Borole,
age 45 yrs., occu.nil,
r/o 31, Datta Colony, Deopur,
Dhule.

...Petitioner..

Versus

- 1] Dhule Zilla Parishd,
Dhule. Through its
Chief Executive Officer.
- 2] Addl.Commissioner,
Nashik Division, Nashik.
- 3] State of Maharashtra.

...Respondents...

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Shri L.V. Sangeet, Advocate h/f Shri V.J. Dixit, Advocate
for petitioner.

None present for respondent no.1 though served.

Smt.M.A. Deshpande, AGP for respondent nos.2 & 3.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 02.12.2016

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1] The petitioner at the relevant time was working
as Junior Assistant in Minor Irrigation Division, Zilla
Parishad, Dhule. Departmental enquiry was initiated
against the petitioner. Upon completion of departmental

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enquiry, it was found that the petitioner is guilty of the charges leveled against him. The petitioner came to be dismissed from service. The petitioner filed an appeal before the appellate authority. The appeal is dismissed by the appellate authority. Aggrieved thereby, the petitioner has filed the present petition.

2] Shri Sangeet, learned counsel for th petitioner submits that the order passed by the authority terminating the services of the petitioner is based upon the material collected during the course of investigation by the Police and the statement made u/s 162 of the Code of Criminal Procedure, 1973. The findings recorded by the Enquiry Officer are perverse and against the record. The learned counsel submits that the proceedings of the departmental enquiry were improper. The same was during the pendency of the criminal proceedings. The petitioner was not given proper opportunity to defend the said departmental enquiry. According to the learned counsel, it was erroneous to rely on the statements of the witnesses in the criminal case u/s 162 of the Cr.P.C. overlooking the fact that the said witnesses were neither cross-examined nor those statements were verified.

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According to the learned counsel, the petitioner could not get proper opportunity to put forth his defence and to examine the evidence. The appellate authority also did not consider the case put forth by the petitioner and has casually dealt with the appeal. The said order is illegal.

3] We have heard the learned AGP for the respondent nos.2 & 3. None appeared today for the respondent no.1 though served.

4] The departmental proceedings were initiated against the petitioner. Two articles of charges were framed under memorandum dated 14.1.1993 and one more charge under memorandum dated 27.2.1996 was framed. The Enquiry Officer examined four witnesses. The petitioner is also an accused in the criminal case. In Criminal Complaint No.424/1990, the petitioner and his father both were accused. All charges are held to be proved by the Enquiry Officer and thereafter decision has been taken terminating the services of the petitioner. It has been observed that ample opportunity has been given to the petitioner. On the contrary, the ;petitioner did not submit proper defence to the charges. The premises of

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the petitioner were raided by the Anti-Corruption Department. The property was sealed by the Court. Three offences of Crime Investigation Department and one offence of Anti-Corruption Department were pending against the petitioner. The petitioner submitted the income tax returns of two years after lapse of five years and that too after issuance of notices by the Income Tax Department. Upon enquiry, it is found that the petitioner has amassed assets disproportionate to his known sources of income. The petitioner was appointed as a Water Boy. Thereafter, he was promoted as a Peon and was at the relevant time working as Junior Assistant. No explanation could be put forth by the petitioner about the disproportionate assets acquired by him. Even the criminal case filed against the petitioner has culminated into conviction of the petitioner. The petitioner, it appears, has filed an appeal before this Court and the same is pending.

5] Be that as it may. The extent of proof in the departmental enquiry and the criminal proceedings would be different. The standard of proof required in the criminal proceedings would be on higher pedestal than

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that of a departmental enquiry. Even the statement of the appellant recorded before the Enquiry Officer would throw light on the conduct of the present petitioner wherein the answers given by the petitioner are also recorded by the Enquiry Officer in his report. The same is self-speaking and is damaging to the case of the petitioner himself.

6] Even otherwise, this Court, while considering a petition arising out of disciplinary proceedings, would be concerned with the due adherence to the procedure and not with the ultimate decision taken unless it is shown that the decision taken is highly disproportionate to the charges leveled against him. For the charges leveled against the petitioner, the decision taken by the disciplinary authority cannot be said to be disproportionate.

7] Considering the above, writ petition is dismissed. Rule is discharged. No order as to costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)