

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO.3606 OF 2005

Premanand S/o Narayan Padale,
Age 53 years, Occ.Service (d)
as Superintendent on the
establishment of District
Legal Services Authority,
Ahmednagar, R/o 43,
Prakashpur Colony, Mishkin Mala,
Ahmednagar. ... Petitioner.

Versus

1. The State of Maharashtra,
through Secretary, Law and
Judiciary Department, Mantralaya,
Mumbai.

2. Hon'ble High Court of Bombay,
through its Registrar,
(Administrative) High Court,
Appellate Side, Bombay.

3. District and Sessions Judge,
Ahmednagar.

4. Member Secretary,
District Legal Services
Authority, Ahmednagar. ... Respondents.

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Mr.R.R.Mantri, advocate for the petitioner.
Mrs.A.V.Gondhalekar, Addl. Government Pleader for
the State.

Mr.C.K.Shinde, advocate for Respondent Nos.2 to 4.

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

Date : 22.12.2016.

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

1. Heard.

2. The petitioner at the relevant time was working as Superintendent. On or about the year 1994, Departmental Inquiry is instituted against the petitioner on the charge that the petitioner has either concealed or lost his service book. The Inquiry Officer appointed, conducted an inquiry. Upon inquiry, the Inquiry Officer held petitioner guilty of either concealing his service book and/or having lost it. The Inquiry Officer submitted his report to the Disciplinary Authority suggesting penalty of withholding one increment. The Disciplinary Authority issued final show cause notice as to why the punishment of stoppage of one increment should not be imposed upon the petitioner. The petitioner

filed reply, however, for three years no steps were taken nor any punishment was imposed. Subsequently, in the year 1998 another Inquiry Officer was appointed by the Disciplinary Authority for recording evidence of one Mr.M.L.Gadgil, in respect of the same charge. The Inquiry Officer recorded the statement of Mr.Gadgil, submitted his report. Pursuant thereto, the Disciplinary Authority issued show cause notice as to why the penalty of dismissing from service should not be imposed upon the petitioner. Thereafter, the petitioner was dismissed from service by the Disciplinary Authority. The petitioner filed appeal. The appeal is dismissed. Aggrieved thereby, the present petition.

3. Mr.Mantri, learned counsel for the petitioner strenuously contends that the petitioner is not responsible for the loss of his service book. The stand of the Respondent is that pursuant to the Outward No.536/1985, it is being suggested that the service book was sent by the Office of the Civil Judge (S.D.), Ahmednagar

to the Office of the Civil Judge (J.D.), Akole. In fact, the said outward number records that the service book of the petitioner is not available in the said Court. The premise on the basis of which the inquiry is conducted is itself erroneous. The learned counsel submits that Rules 8 and 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 has not been followed. According to the learned counsel, when in 1995 inquiry was conducted, the same was concluded. The Disciplinary Authority had issued final show cause notice of stoppage of one increment then again the Disciplinary Authority does not have any jurisdiction to appoint new Inquiry Officer directing recording new evidence and propose another punishment of dismissal from service. The same is not in consonance with Rule 9 of the Rules 1979.

4. The learned counsel further submits that during the course of the inquiry, the petitioner was not given proper opportunity. He was not allowed to engage advocate and was not permitted to defend properly. The Inquiry

Officer was a Judicial Officer. The petitioner was a Superintendent, as such the petitioner ought to have been given assistance of legal practitioner. The petitioner had asked for such assistance but was specifically denied. The inquiry is vitiated on said count. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **"Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and others"** reported in **1983 (2) Bom.C.R.334**. So also of the judgment of the Apex Court in a case of **"G.L.Subramaniam Vs. Collector of Customs, Cochin"** reported in **1972 (3) SCC-542**. The learned counsel further submits that conducting inquiry again was absolutely erroneous. It is stated that the authority found some envelope and thereafter came to the conclusion to record the evidence of Mr.Gadgil. The said envelope appears to be planted. It is said to have been written in 1994 before the start of the inquiry conducted by the earlier Inquiry Officer. Mr.Gadgil, in his evidence also has stated that prior to his deposition before the Inquiry Officer in the year 1998 he had never

mentioned the fact that the petitioner had torn his service book. The said evidence does not inspire any confidence. He is not even in a position to state the day, month and the year of the said alleged incident. Relying on such a witness major penalty is imposed on the petitioner, dismissing from service. The same is not permissible. The learned counsel submits that the petitioner was on leave since 25.4.1985, as such could not have been in the office at Akole. The alleged incident is stated to have taken place at Akole. Said Mr.Gadgil was not even posted at Akole. He was posted at different place and he states that he was on leave and the day may be 1st or 3rd Saturday . According to the learned counsel, the whole procedure adopted is in breach of the Rules, principles of natural justice. The inquiry stands vitiated. The learned counsel in alternate states that the punishment awarded is also disproportionate to the act complained.

5. Mr.C.K.Shinde, learned counsel for the Respondent submits that this Court in Writ

jurisdiction may not reappreciate the evidence recorded in the inquiry. The inquiry is not concluded unless and until the Disciplinary Authority imposes punishment. To substantiate the said contention, the learned counsel relies on the judgment of the Apex Court in a case of **"Punjab National Bank Vs. Kunj Behari Misra"** reported in **1998 (7) SCC 84**. The learned counsel submits that Rule 9 of Rules 1979 empowers the Disciplinary Authority to remit the case to the Inquiry Officer for further inquiry and thereafter again provisions of Rule 8 apply. The same has been scrupulously followed in the present case. The reasons are recorded by the Disciplinary Authority for recording of further evidence by the Inquiry Officer. The petitioner is guilty of serious misconduct of tearing his service book as it contained many adverse remarks. The same has been proved by the evidence of Mr.Gadgil. No error has been committed by the Disciplinary Authority in that regard.

6. According to the learned counsel, Rule

8(a) specifically prohibits engaging legal practitioner. The nature of the inquiry was not such that complicated questions of law were involved, as such the petitioner was rightly not allowed to engage the advocate. No fault can be found in the procedure followed and punishment imposed. The learned counsel further submits that present inquiry is not the only inquiry conducted against the petitioner, the petitioner is found guilty for various misconducts and in another inquiry he has been removed from service, so also in third inquiry separate punishment is also imposed upon him. This aspect also needs to be considered while imposing punishment upon the petitioner. All these aspects are rightly considered.

7. We have considered submissions canvassed by the learned counsel for respective parties. The Disciplinary Inquiry is conducted not only to prove the guilt of the delinquent but also to see if he is innocent. The Departmental Inquiry is initiated to elicit truth of the charges framed.

8. It is a fact that the petitioner was denied of assistance of advocate. However, it does not appear that major prejudice was caused to him. The petitioner had cross-examined the witnesses and there is nothing to suggest that he was not in a position to ably conduct the said proceedings. We do not think that on the said ground, the inquiry should vitiate.

9. In the present matter the charge against the present petitioner is that the petitioner failed to maintain devotion to his duty inasmuch as either he concealed his service book or misplaced it. The said incident it appears is of the year 1985. The Departmental Inquiry No.4/1994 is initiated against the petitioner in the year 1994. The witnesses were examined in the said Departmental Inquiry. The inquiry conducted by Mr.A.D.Babrekar, 4th Additional District Judge, Ahmednagar, holds the petitioner guilty of either concealing his service book or having lost at his hand and he did it for some purpose. Pursuant to the said Inquiry Report, the Disciplinary Authority issued

a show cause notice to the petitioner on 20.9.1995 calling upon the petitioner to show cause within 15 days of the receipt of the said notice as to why penalty proposed by the Inquiry Officer i.e. withholding of increment of pay should not be imposed upon him. The petitioner replied the said show cause notice on 21.11.1995. After the petitioner replied to the said final show cause notice, no punishment was imposed by the Disciplinary Authority and almost after three years again the Disciplinary Authority appointed Inquiry Officer Mr.B.T.Narwade, Additional District Judge, Shrirampur, to record evidence of Mr.M.L.Gadgil. The evidence of Mr.M.L.Gadgil, was recorded in the year 1998 by the Inquiry Officer Mr.Narwade. Thereafter, he again submitted the report holding that the petitioner has destroyed his own service book. Thereafter, the petitioner was dismissed from service.

10. The earlier inquiry was conducted in the year 1994 by Mr.Babrekar, the inquiry report was submitted. The said inquiry report was accepted by the Disciplinary Authority and a

final show cause notice was issued to the petitioner as to why punishment of withholding the increment should not be imposed upon the petitioner. The said notice was also replied by the petitioner. Thereafter, for three years, nothing was done and in the year 1998, new Inquiry Officer - Mr.Narwade was appointed for recording the evidence of one Mr.Gadgil and thereafter punishment of dismissal was imposed.

Rule 9 certainly empowers the Disciplinary Authority for reasons to be recorded in writing to remit the case to the Inquiry Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold further inquiry.

11. In the present case, the Disciplinary Authority accepted the inquiry report of Mr.Babrekar. The Disciplinary Authority also proposed punishment upon the petitioner of withholding the increment and after three (3) years, directed evidence of one Mr.Gadgil, to be recorded by appointing a new Inquiry Officer

Mr.Narwade. The same has to be for the reasons to be recorded in writing. The affidavit does not state the reasons. It is submitted by the Respondents that a sealed envelope was found along with papers in which it was stated that Mr.Gadgil had said that he had seen the petitioner tearing his service book. The said letter was of the year 1994 and on that basis the evidence of Mr.Gadgil is further recorded. In fact, the charge has become stale. The incident was alleged to be of 1985. The earlier Inquiry Officer had come to the conclusion that the petitioner had concealed the service book or had lost at its end for some purpose. The punishment was also proposed by the Disciplinary Authority by issuing a show cause notice and upon further evidence the subsequent Inquiry Officer had concluded that the petitioner had torn the service book. The effect is one and the same. It is not the case that the Disciplinary Authority did not accept the earlier inquiry report submitted by Mr.Babrekar but in fact, the Disciplinary Authority had accepted the inquiry report of Mr.Babrekar and proposed minor

punishment. The service book was also reconstituted.

12. We are aware that while exercising writ jurisdiction, this Court would not reappreciate the evidence nor would travel through the evidence recorded unless it is pointed out that the evidence has been appreciated perversely. Bare glance of the evidence of Mr.Gadgil recorded subsequently, it would be clear that he is not in a position to state the day, date or month of the alleged incident. He states that at the relevant time in the year 1985-86 he was working as Senior Clerk at Kopargaon. The incident must have taken place on 1st or 3rd Saturday and while on leave he had gone to Akole. The alleged incident is of Akole, however, he does not state the month and the year. He also does not state the alleged incident to anyone at that time and for the first time, he has stated about the incident on 17.7.1998. He further stated that he had gone to Akole only once. It would be stretching too far to rely upon such evidence for imposing a major punishment of dismissing the petitioner from

service.

13. Even in the first inquiry conducted by Mr.Babrekar, the petitioner was held guilty of concealing the service book and/or having lost it for some purpose and a minor punishment of withholding the increment was sought to be imposed. Even show cause notice to that effect was issued by the Disciplinary Authority.

14. In light of the above, it was inappropriate for the Disciplinary Authority to impose punishment for the same charge, dismissing the petitioner from service.

15. Considering the aforesaid conspectus of the matter, we set aside the order of dismissing the petitioner from service and direct the Respondents to proceed further with the final show cause notice issued to the petitioner dated 20.9.1995, suggesting withholding of increment of pay of which reply has been given by the petitioner. Considering the same, the Disciplinary Authority shall take decision about

imposition of penalty.

16. The Writ Petition is accordingly partly allowed. Rule is made partly absolute. No costs.

17. We hope and trust that the decision will be taken by the Disciplinary Authority expeditiously.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

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